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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Romania submitted by Mr. Joseph Voyame, Special Rapporteur appointed in accordance with resolution 1989/75 of the Commission on Human Rights

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CONTENTS

		Paragraphs	Page
INTRODUCTION		1 - 6	1
I.	MANDATE AND ACTIVITIES OF THE SPECIAL RAPPORTEUR	7 - 16	2
II.	OUTLINE OF EVENTS RELATING TO THE HUMAN RIGHTS SITUATION IN ROMANIA SINCE THE SUBMISSION OF THE PREVIOUS REPORT	17 - 65	3
III.	EXAMINATION OF INFORMATION COMPILED ON THE HUMAN RIGHTS SITUATION IN ROMANIA	66 - 135	9
	A. Right to life and to physical and moral integrity; respect for privacy	69 - 78	9
	B. Administration of justice	79 - 88	12
	C. Freedom of movement; right of asylum; right to a nationality	89 - 92	16
	D. Freedom of thought, conscience, religion or belief	93 - 99	16
	E. Freedom of opinion and expression	100 - 105	19
	F. Right of assembly and association; participation in the conduct of public affairs.	106 - 111	21
	G. Right to work; trade union rights	112 - 116	22
	H. Right to an adequate standard of living; protection of childhood	117 - 112	24
	I. Right to education; cultural rights	123 - 128	25
	J. Rights of persons belonging to minorities	129 - 136	27
IV.	CONCLUSION AND RECOMMENDATIONS	136 - 163	30

Annexes

I.	Programme of work for the visit to Romania from 17 to 27 October 1991	35
II.	List of legislation in the field of human rights adopted between October 1990 and September 1991	38
III.	Establishment of the Romanian Institute for Human Rights	43
IV.	Amendments to the Code of Criminal Procedure by Act No. 20 of 9 October 1990	47

INTRODUCTION

1. At its forty-fifth session, the Commission on Human Rights decided, by its resolution 1989/75, to request its Chairman to appoint a special rapporteur to examine the human rights situation in Romania.

2. Pursuant to that resolution, the Special Rapporteur submitted to the Commission at its forty-sixth session, his first report (E/CN.4/1990/28 of 18 December 1989) as well as an addendum (E/CN.4/1990/28/Add.1) which updated it and referred to changes in Romania since the events of December 1989. His mandate was extended for one year by resolution 1990/50 during the same session of the Commission.

3. At its forty-seventh session, the Commission had before it a further report by the Special Rapporteur (E/CN.4/1991/30). At that session it adopted, on 6 March 1991, resolution 1991/69 entitled "Situation of human rights in Romania". In the resolution, the Commission expressed the conviction that the continued services of the Special Rapporteur would be of benefit to the Government and people of Romania during the present period of transition towards full respect for human rights and fundamental freedoms in Romania. The Commission, inter alia, took note of the fact that, despite regrettable lapses, respect for human rights was in general continuing to improve in Romania; it recommended that the Romanian authorities continue their action to ensure that human rights in all their aspects were respected in their country, both de jure and de facto, and pay particular attention to the points raised in the report of the Special Rapporteur (E/CN.4/1991/30); it also recommended that the Romanian authorities consider the possibility of continuing to use the United Nations voluntary fund for advisory services and technical assistance; it decided to extend the mandate of the Special Rapporteur for a further year, and requested him to report to it at its forty-eighth session; finally, it took note with appreciation of the readiness of the Government of Romania to cooperate with the Commission and its Special Rapporteur.

4. At its first ordinary session in 1991, on 31 May, the Economic and Social Council adopted decision 1991/253 approving Commission resolution 1991/69.

5. The present report is submitted to the forty-eighth session of the Commission on Human Rights in accordance with the provisions of paragraph 6 of resolution 1991/69. In Chapter I, the Special Rapporteur describes the activities he carried out in performing his mandate. Chapter II contains an outline of the main events relating to the human rights situation in Romania which have occurred since the submission of the previous report (E/CN.4/1991/30). Chapter III contains an analysis of the information compiled by the Special Rapporteur in connection with the various human rights and fundamental freedoms and their de jure and de facto implementation in Romania. Lastly, in Chapter IV, the Special Rapporteur submits the conclusions and recommendations deriving from his analysis of the human rights situation in Romania.

6. Annex I summarizes the programme of work of the Special Rapporteur during his visit to Romania. Annex II contains a list of legislation in the field of human rights. Annex III reproduces the text of Act No. 9, of 29 January 1991,

concerning the establishment of the Romanian Institute for Human Rights. Annex IV reproduces the amendments introduced into the Code of Criminal Procedure by Act No. 20 of 9 October 1990. The text of the new Romanian Constitution appears in document E/CN.4/1992/28/Add.1, which will be distributed in French only.

I. MANDATE AND ACTIVITIES OF THE SPECIAL RAPPORTEUR

7. The present report has been drafted pursuant to resolution 1991/69 of the Commission on Human Rights. In the exercise of his mandate, and having regard to the constructive attitude of the Government of Romania and the readiness of that Government to cooperate with the Commission and with himself, the Special Rapporteur has endeavoured to compile relevant information from the Government, specialized agencies, intergovernmental and non-governmental organizations, and the individuals concerned.

8. In a letter of 12 July 1991 addressed to the Minister for Foreign Affairs, the Special Rapporteur expressed his appreciation to the Romanian authorities for their constructive attitude towards him and for their readiness to cooperate with the Commission and with himself, and he proposed that he should make a visit to Romania from 17 to 27 October 1991. The proposal was accepted by the Romanian authorities and the visit took place on those dates.

9. During his stay in Romania, the Special Rapporteur was received by H.E. Mr. Ion Iliescu, the President of the Republic, and by Mr. Theodor Stolojan, the Prime Minister. In accordance with the programme worked out in consultation with the Romanian Ministry of Foreign Affairs, the Special Rapporteur had talks in this Ministry with Mr. Adrian Nastase, Minister, and other senior officials; in the Ministry of Defence with Mr. Nikolai Spiroiu, Minister, and other senior officials; in the Ministry of Justice with Mr. Mircea Ionescu-Quintus, Minister, and other senior officials; in the Ministry of Communications with Mr. Andrei Chirica, Minister; in the Ministry of the Interior with Lieutenant-General Dumitru Penciuc, Secretary of State, and other senior officials; in the Ministry of Education and Science with Mr. Nikolaus Kleininger and Mr. Mihai Zamfir, Under-Secretaries of State; in the Ministry of Culture with Mr. Eugen Vasiliu, Under-Secretary of State; in the Ministry of Health with Mr. Emil Tomescu, Secretary of State, and other senior officials; in the Ministry of Labour and Social Welfare with Mr. Constantin Alecu, Secretary of State, and other senior officials; in the Ministry of Youth and Sport with Mr. Ion Olteanu, Secretary of State for Youth, and other senior officials; in the Secretariat of State for the Disabled with Mrs. Rodica Munteanu, Secretary of State, and other senior officials; and in the Secretariat of State for Worship with two senior officials. The Special Rapporteur also had talks with Mr. Virgil Magureanu, Director of the Romanian Information Service. In connection with the administration of justice, the Special Rapporteur met Mr. Mihai Popa Cherecheanu, the Government Attorney, Mr. Nicolae Cochinescu, First Deputy to the Government Attorney, Mr. Teofil Pop, President of the Supreme Court of Justice, together with other judicial officers. He also visited Jilava prison and prison hospital, the Criminal Investigation Department in Bucharest, as well as police stations Nos. 10 and 15 in

Bucharest; he held talks with the heads of these establishments and with a number of detainees. He also visited orphanage No. 12 in Bucharest where he spoke to the director and some of the inmates.

10. The Special Rapporteur also met Senator Antonie Iorgovan, Chairman of the Parliamentary Commission set up to draft a constitution, and members of the Commission; he also had talks with the Chairman of the Parliamentary Commission for human rights, worship and minorities, Deputy Ion Oancea, and members of the Commission; he also met officials from the offices of the Parliamentary Commissions of Inquiry into the events in Tirgu Mures, Harghita and Covasna.

11. The Special Rapporteur also had talks with the Patriarch Teoctist and other senior officials of the Romanian Orthodox Church, with the Chief Rabbi, Moses Rosen and with Mgr. Ioan Robu, the Roman Catholic Archbishop. He also met Father Tertulian Langa, Vicar-General of the Romanian Greek (Uniate) Catholic Church of Cluj-Gherla, and other members of that Church.

12. He also had talks with Mr. Razvan Theodorescu, President of Romanian Radio and Television. He also visited the German High School in Bucharest and met the Principal, Mr. Mihai Zamfirescu.

13. Finally, he had the opportunity of meeting several leaders of political and parliamentary parties and groups, including representatives of the Hungarian and gypsy minorities, representatives of non-governmental organizations dealing with human rights issues, journalists, doctors, sociologists, lawyers, educators, students, trade-unionists and others.

14. On 22 October 1991, the Special Rapporteur went to Timisoara, where he met Mr. Dorel Borza, the District Prefect of Timis and Mr. Henrich Drobny, the Deputy Prefect. He also spoke to representatives of non-governmental organizations dealing with human rights, lawyers, journalists and others.

15. On 25 and 26 October 1991, he travelled to the district of Suceava, where he had talks with Mr. Daniel Catargiu, the Prefect, Mr. Vasile Corniciuc, the Deputy Prefect, Mr. Filaret Poenariu, the Mayor of Suceava as well as other local leaders and members of the orthodox clergy.

16. The Special Rapporteur would point out that, in the course of his visit to Romania, just as during his previous visits, he met with unfailing help from the authorities, enjoyed complete freedom of movement and freely met all the persons from whom he wished to have information. In particular, he had the opportunity, during his visits to police stations and to Jilava prison and prison hospital to talk to a number of detainees without witnesses.

II. OUTLINE OF EVENTS RELATING TO THE HUMAN RIGHTS SITUATION IN ROMANIA SINCE THE SUBMISSION OF THE PREVIOUS REPORT

17. This chapter outlines the main events which have had an impact on the human rights situation in Romania since the submission of the previous report (E/CN.4/1991/30) in January 1991. It is based essentially on news items in the international press.

18. 3 January 1991. Mr. Banu Radulescu, a member of the Union of Writers and editor-in-chief of the magazine Memoria was struck in the face by two men towards 9 p.m. when returning home. He states that he had earlier received telephone threats.

19. 10 January 1991. A strike was launched in Timisoara by the local free trade-unions calling for the departure of Petre Roman's Government. The four universities of the town and seven enterprises followed the strike movement. On the same day, the Mayor and Police Chief of Timisoara as well as the Departmental Prefect of Timis tendered their resignation.

20. 11 January 1991. Demonstration by several thousand people in Revolution Square in Bucharest in support of the Timisoara strikers called by the Civic Alliance (a movement encompassing the opposition groups outside Parliament).

21. 16 January 1991. Submission of the report of the Parliamentary Commission of Inquiry on the events in Tirgu Mures in March 1990 at an extraordinary session of Parliament in the presence of deputies and senators.

22. 22-29 January 1991. Two contradictory reports on the events of 13-15 June 1990 in Bucharest were submitted to Romanian deputies and senators by the Parliamentary Commission of Inquiry.

23. 7 February 1991. Entry into force of new adoption procedures whereby adoption files will in future be submitted for approval to a new governmental committee before they are referred to the Departmental Courts.

24. 11 February 1991. Mr. Petru Cretia, a teacher of Ancient Greek and a member of the Civic Alliance, was attacked by five men, towards 9 p.m. when returning home in Bucharest. He states that he had earlier received telephone threats concerning his "extreme right-wing activities harmful to the State".

25. 14 February 1991. Adoption of the law on the land reform fund.

26. 17 February 1991. The Government informs the railway workers who have been on strike for a week that they will be dismissed or prosecuted if they continue their action. On 14 February, the Supreme Court had ordered a two-month suspension of the strike which was interfering with foreign trade. According to the statement by the Government, refusal to obey might give rise to dismissal, "material responsibility for the damage", or "notification of the criminal investigation organs" which would bring criminal proceedings against the strikers.

27. 18 February 1991. Cancellation for "technical" reasons of the Romanian television programme "Viewpoints" which enabled the opposition parties to have free access to the media. Programmes in the languages of the national minorities were reduced or transferred to the second channel, not received in Transylvania. The "Before the nation" programmes in which the President and the Prime Minister appeared once a month were also cancelled. The Civic Alliance, the Convention for Democracy (Parliamentary opposition), the Democratic Union of Romanian Magyars and the Association of Journalists denounced these measures as "anti-democratic".

28. 20 March 1991. Withdrawal of the draft law on the press which envisaged heavy prison sentences for journalists who had insulted government leaders. Anti-government demonstrations in Bucharest in protest against the announcement of new price increases. This demonstration, organized by the trade union federation ALFA, was attended by some 10,000 people.

29. 1 April 1991. Liberalization of the price of basic commodities and further devaluation of the leu. The price of basic foodstuffs increased on average by 100 to 200 per cent. Compensation was granted amounting to up to 60 per cent of the average salary. The parliamentary opposition declared itself against this liberalization.

30. 7-8 April 1991. Following the murder, on 7 April, of a young Romanian at Bolintin-Deal some 20 kilometres from Bucharest, 22 houses belonging to gypsy "ursars" (bear leaders) were burned down by the inhabitants of the village.

31. 12 April 1991. Demonstrations attended by nearly 100,000 people in Bucharest and tens of thousands of other people in the large towns of the country to call for the resignation of President Iliescu, the dissolution of the Parliament and the formation of a transitional Government pending new early elections.

32. 13 April 1991. Meeting of the opposition parties and movements for a common strategy against the National Salvation Front (NSF).

33. 22 April 1991. Anti-government demonstration by several thousand people in University Square in Bucharest called by the Independent Group for Democracy and the Association of 21 December. In the late evening, the police intervened in order to evacuate several hundered demonstrators who were holding up the traffic.

34. 29 April 1991. Presentation by the Prime Minister of a new Government. Two "liberal" personalities were members of this Government: Mr. Dinu Patriciu, leader of the Liberal Party, Young People's Branch, the outcome of a split away from the National Liberal Party, who became Minister of Public Works and Planning: and Mr. Mircea Marmeliuc, a member of the Liberal Party, who was appointed Minister of Labour. Mr. Valeriu Pescaru, a deputy of the Agrarian Democratic Party (close to the FSN) became Secretary of State for Agriculture. Mr. Eugen Dijmarescu became Minister of the Economy and Finance. General Victor Atanase Stanculescu, a former Minister of Defence, became Minister of Industry, and General Constantin Spiroiu replaced him at the Ministry of Defence. The Ministry of Social Welfare was entrusted to a former political adviser of President Iliescu, Mr. Dan Mircea Popescu.

35. 3 May 1991. Split within the FSN and establishment of a new political group, the Social-democratic National Salvation Front (NSF-sd), led by Mr. Velicu Radina, former propaganda secretary of the NSF.

36. 8-9 May 1991. The house of a gypsy was pillaged by villagers at Romanesti, Dimbovita district, to the west of Bucharest.

37. 16-17 May 1991. On 16 May a house belonging to a gypsy was burned down at Ogrezeni following an incident in which a Romanian had been stabbed by young gypsies. On the following day, 13 of the houses belonging to the same group of gypsy "bear leaders" were burned down or destroyed.

38. 18 May 1991. Seven houses belonging to gypsy bear leaders were devastated or burned at Bolintin Vale, a village close to Bucharest.

39. 4 June 1991. The Minister of the Economy and Finance announced officially that the Government wished to organize new Parliamentary elections in October or November.

40. 3 June 1991. The Military Chamber of the Romanian Supreme Court reduced the sentence pronounced at first instance on Nicu Ceaucescu, the youngest son of Nicolae Ceaucescu, from 20 to 16 years' imprisonment. Whilst reducing the penalty, the Chamber, whose decision is final, found Nicu Ceaucescu guilty of "genocide".

41. 9-10 June 1991. In the night of 9 to 10 June, inhabitants of the village of Plaiasii de Sus burned down 26 houses belonging to members of the gypsy community and murdered a 56 year old gypsy, Adam Callony, following the stabbing by two gypsies of a villager belonging to the Hungarian ethnic group.

42. 13-15 June 1991. Commemoration in University Place in Bucharest of the events of June 1990 by several thousand people, initiated by most of the opposition parties.

43. 17 June 1991. Demonstration in Bucharest by 10,000 workers from the Faur heavy engineering works.

44. 18 June 1991. Anti-Government meeting of the National Confederative Union (UCN) in front of the seat of Government. This union, which has nearly 3 million members and encompasses opposition trade unions, demanded the resignation of the Government and called for a general strike.

45. 22 June 1991. The Romanian Government asked Parliament to accelerate the adoption of a draft law to punish the traffic in new-born children and to regulate adoptions. The draft, which provides for penalties of up to five years' imprisonment for any parent, guardian or anyone seeking to derive profit from the adoption of a child, had already been adopted by the Chamber of Deputies.

46. 24 June 1991. The Chief Rabbi of Romania, Moses Rosen, denounced a wave of anti-Semitism and called for the prohibition of the new nationalist party Romania Mare and the two weekly publications Romania Mare and Europa which, according to him, incited to "racial hatred".

47. 29 June 1991. The Civic Alliance, the main movement of the opposition outside Parliament, decided to become a political party and to join with the other opposition movements in opposing the NSF at the forthcoming elections.

48. 8 July 1991. The Romanian Government announces its support for the German plan to halt the flood of Romanian immigrants and to repatriate those already in Germany.

49. 27 August 1991. The Romanian Government officially recognized the independence of Moldavia.

50. 30 August 1991. Beginnings of a reconciliation between the NSF on one hand and the Civic Alliance and the Parliamentary opposition parties on the other in the face of movements such as the Socialist Labour Party and the nationalist parties of the National Unity of Romanians and Romania Mare.

51. 25 September 1991. After provoking violent incidents in the night of 24 to 25 September at the station of Petrosani and seizing three trains, thousands of striking miners from the Jiu valley arrived in Bucharest to protest against the economic reforms and call for the resignation of the Prime Minister. In the afternoon they tried to take the seat of Government by storm; attacked by demonstrators armed with truncheons, steel bars, chains and axes, the anti-riot police deployed in front of the building responded with tear-gas and other measures; four people were reported to have been killed in the riots. In a communiqué broadcast on the radio, President Ion Iliescu made an appeal for calm.

52. 26 September 1991. Mr. Petre Roman, Prime Minister, handed over his mandate to President Iliescu. He added that he would retain his functions at the head of the Government "as long as calm was not restored". The Romanian Government announced the deployment of the army throughout the country and the distribution of "war munitions". The Ministry of Defence distributed real bullets to the soldiers who were to be deployed to protect vital administrative buildings and other property if necessary. All miners in Romania belonging to the Federation of Miners' Trade Unions began an "unlimited general strike" to be continued until the miners' demands were completely satisfied: salary increases and a price freeze. The miners and other anti-Government demonstrators ransacked the Romanian Parliament. In the evening, the thousands of demonstrators armed with incendiary bombs laid siege to the Romanian television building in the north of Bucharest. The Fratia trade union, representing thousands of workers in different branches, proclaimed its solidarity with the miners' claims, but criticized the violence.

53. 27 September 1991. After being received by President Iliescu, one of the miners' leaders, Miron Cosma, stated that the conflict with the Government was over and urged his comrades to return home. However, after incidents around the residence of President Iliescu, during which the police and the anti-riot forces fired rockets that caused deafness and tear-gas, the miners continued their activities in various places in the capital. President Iliescu began negotiations with the parliamentary opposition with a view to the formation of "Government that was open-minded". The spokesman for the Office of the President announced President Iliescu's intention to visit the Jiu valley on 30 September. The NSF called for immediate elections. In the evening, Mrs. Doina Cornea, in the course of an appearance on Romanian television called for a general strike in order to "remove the Romanian President Ion Iliescu".

54. 28 September 1991. Security forces invested University Place: tear-gas was used to disperse the demonstrators and the miners. Mr. Roman, who had handed over his mandate on 26 September and was managing current affairs until the formation of the next Government, held a Cabinet meeting. According to a Cabinet communiqué, "the disturbances have tarnished the image of the country abroad and could act as a serious break on economic restructuring". The miners gradually returned to the Jiu valley. The last group of miners returned to Petrosani late in the evening of 28 September.

55. 29 September 1991. Calm restored to the capital. The disturbances are reported to have caused at least two deaths and 450 casualties. President Iliescu negotiated with the main parties represented in the Parliament with a view to the formation of a coalition Government.

56. 1 October 1991. Theodor Stolojan, a former Minister of Finance in the National Salvation Front Government and the director of the national agency responsible for the privatization of Romanian industry was appointed Prime Minister.

57. 17 October 1991. Submission to the Parliament of the conclusions of the Parliamentary Commission of Inquiry on the incidents at Covasna and Harghita, which occurred in the two districts on 22 December 1989. The results of the inquiry indicated that a group belonging to the Hungarian minority, the Siculi, had attacked the Romanian population, causing the death of 7 policemen and the flight of 220 Romanians from the region.

58. 6 November 1991. The leader of the Government, Mr. Theodor Stolojan, announced the limited convertibility of the national currency, the leu, with effect from 11 November. The measure would result in a substantial increase in prices; however, the prices of a number of basic commodities and services would be frozen until May 1992.

59. 8 November 1991. Demonstration by several thousand royalists in Bucharest organized by a dozen opposition political parties.

60. 11 November 1991. The Rompres agency reported that the country was threatened with food shortages during the winter. The Ministry of Defence was to mobilize 25,000 soldiers for a fortnight on the State farms to take part in gathering in the autumn crops which were in danger of rotting in the fields, due to the shortage of motor fuel and spare parts for agricultural equipment.

61. 21 November 1991. The adoption, by a sizeable majority, of the new Constitution by the Constituent Assembly composed of deputies and senators. Most opposition members rejected the text. The Prime Minister, Mr. Stolojan, announced that local elections would be held at the end of January-beginning of February 1992 and that the next general elections (for deputies, senators and the President) would probably be held at the end of March-beginning of April 1992.

62. 22 November 1991. The Constituent Assembly announced that the population would vote on 8 December in a referendum on the new Constitution.

63. 25 November 1991. Radio Bucharest announced that the municipal and departmental local elections would be held on 9 February 1992.

64. 8 December 1991. Approximately 61 per cent of the 16 million electors voted on the occasion of the referendum on the new Constitution.

65. 9 December 1991. Eight former communist senior officials and members of the Securitate were sentenced to terms of imprisonment of up to 25 years for their part in putting down the Timisoara demonstrations which had caused the death of approximately 100 people in December 1989. Ion Coman, a member of the former Political Bureau, was sentenced to the heaviest term (25 years' imprisonment).

III. EXAMINATION OF INFORMATION COMPILED ON THE HUMAN RIGHTS SITUATION IN ROMANIA

66. The period covered by this report was characterized by unprecedented activity in the legislative field in Romania. By October 1991, the Romanian Parliament had adopted more than 100 new laws; approximately 100 legislative drafts and initiatives were also under consideration in various parliamentary commissions. Further, the Constituent Assembly debated and approved the principles for the elaboration of the draft constitution and began the process of adopting articles of the draft; at the time of the Special Rapporteur's visit in October 1991, the Constituent Assembly had already adopted 64 articles of the draft constitution. The draft, adopted on 21 November by the Constituent Assembly composed of deputies and senators, was approved by population referendum, on 8 December 1991, by a sizeable majority.

67. Human rights issues have a prominent place in the legislative drafts and instruments under consideration or already adopted. For instance, in order to secure effective respect for the international human rights standards to which Romania has subscribed, article 20 (2) of the Constitution specifies the primacy of international rules over domestic law. Similarly, chapter II of title II explores in detail fundamental rights and freedoms (arts. 22-48); mention may also be made of chapter IV of title II, which introduces the institution of the ombudsman in order to defend the rights and freedoms of citizens.

68. In addition to the Constitution, many laws, decrees or governmental decisions adopted or considered recently contained provisions concerning human rights. A list of these instruments appear in annex II of the report. The Special Rapporteur will revert to certain of these provisions under the following headings, which correspond to the relevant articles of International Covenants on Human Rights.

A. Right to life and to physical and moral integrity; respect for privacy

69. The information and testimony received by the Special Rapporteur indicate that a number of measures have recently been adopted or planned to guarantee respect for the right to life and to physical and psychological integrity. For example, article 22 of the Constitution guarantees these rights and prohibits torture and other forms of inhuman or degrading punishment or treatment, or the death penalty. As for respect for personal and family life

and privacy, this right is guaranteed by article 26 of the Constitution; article 27 guarantees the inviolability of the domicile and article 28 respect for the secrecy of correspondence and of other legal means of communication.

70. A number of provisions have also been envisaged to redress the abuses and violations committed under the former regime in the area of the right to life and to physical and moral integrity. Thus, Act No. 38 of 13 December 1990 extends the provisions of Decree-Law No. 118 of 30 March 1989 (see E/CN.4/1991/30, para. 69) to persons expelled from the country after 23 August 1944. Act No. 42/90 and Act No. 43/91 deal with respect for the memory of the martyred heroes and the granting of rights to the victims of the Revolution of December 1989 and their heirs. Similarly, Act No. 59/91 concerning the granting of rights to persons persecuted for political reasons, by the dictatorship established on 5 March 1945, provides that compensation shall be granted for each year of detention. Lastly, a parliamentary commission of inquiry has been established, at the request of the Ministry of Health, with the participation of various concerned ministries and bodies, to redress the abuses committed in psychiatry, and in particular arbitrary internments for political reasons on the pretext of mental disorder.

71. Several of the bills drafted or adopted recently concern the status and the operation of the institutions responsible for maintaining order. There is, for example, Act No. 40 of 18 December on the organization and operation of the Ministry of the Interior; there are bills on the organization and operation of the Ministry of the Interior, bills dealing respectively with the organization and operation of the the police and the gendarmerie and Act No. 61 of 27 September 1991 concerning the punishment of acts contrary to the standards of society and public peace and order. Article 2 of the latter Act lists various actions which constitute violations including the commission of acts or the making of threats likely to disturb public peace and order or arouse the indignation of the public or insult its honour and dignity or that of public institutions.

72. Various measures have been taken to familiarize the members of the armed forces and the officials responsible for maintaining order and public security with humanitarian law and human rights principles and standards. A department of international humanitarian law has been set up within the Army General Staff; committees for humanitarian law and human rights have also been established within the Ministry of the Interior, within the police and the gendarmerie. A course on fundamental rights and freedoms has been included in the syllabus of the Police Academy with effect from the school year 1990-1991. In addition, protocols of understanding between the Department of Prisons and a non-governmental organization for the defence of human rights, the Independent Romanian Society for Human Rights (SIRDO), have been drafted with a view to setting up a human rights training programme for warders and other officials in detention centres.

73. Notwithstanding these forward-looking developments, the information received attests to the persistence, in practice, of offences against life, integrity and respect for the privacy of the individual. The previous report had referred to the events of 13 to 15 June 1990, in Bucharest, which had ended with several people dead and many injured (E/CN.4/1991/30, paras. 72, 74 and 75). The two reports on those events submitted at the end of January 1991

to the Romanian Parliament by the Parliamentary Commission of Inquiry established for that purpose differ in their conclusions, but both bring the actions of the police into question. According to many witnesses, in the course of 1991, the police used unwarranted and excessive violence in quelling demonstrations, as in the demonstrations staged in Bucharest from 11 to 13 January, during which a number of Romanian and foreign journalists are alleged to have been ill-treated, while doing their work, by the police. Again, on 22 April, thousands of peaceful demonstrators are alleged to have been violently dispersed by the police who used truncheons and injured several journalists. The violent incidents between demonstrators and the forces of law and order, between 25 and 28 September 1991, when several thousand miners came to Bucharest from the Jiu Valley (see chapter II above) were also mentioned. The incidents ended with the death of three persons (two civilians and one soldier) and injuries to 500 people, about 100 of whom had to be hospitalized. Many witnesses to those incidents report that the forces of law and order used excessive violence. It has been said that poisonous gases were used widely; that real bullets were fired, sometimes without a warning; that the wounded were taken away by the forces of law and order before members of the medical corps could intervene and, lastly, that many people were reportedly brutally beaten either at the scene of the demonstrations, or when they were transferred to the police station or while in police custody.

74. A recurrent theme in the conversations which the Special Rapporteur had with many people was that the old ways of thinking and intolerant attitudes inherited from the past persisted among the members of the forces of law and order. Consequently, it was still commonplace for the police to make arbitrary arrests and to commit acts of brutality during arrests or interrogations. Several specific cases were reported to the Special Rapporteur. This unfortunate survival of methods which have been officially condemned are apparently due to the fact that the overwhelming majority of the members of the police have remained in their posts and that some of them who were notorious for their abuses in the past would seem to enjoy impunity.

75. On the other hand, certain witnesses also stressed that on other occasions there was an insufficient police presence or reaction, even in circumstances where it seemed likely that tension would mount. That seems to have been the case, in particular during a number of incidents in which the victims were members of the gypsy minority (see para. 135 above).

76. With regard to prison administration, under Act No. 21 of 15 October 1990, the administration of prisons which was formerly the responsibility of the Ministry of the Interior was transferred to the Ministry of Justice (E/CN.4/1991/30, para. 88). This law entered into force on 15 January 1991. A bill on the execution of penalties was drafted and submitted to Parliament and is to be given priority consideration with a view to its adoption, following the adoption of the draft Constitution. In practice, the poor conditions of detention mentioned in the previous report (E/CN.4/1991/30, paras. 76 and 91) still give rise to cause for concern. The main problem in this area has been the lack of material resources and of appropriate premises. Also, the old ways of thinking still persist and often condition the behaviour of the prison staff. A government programme has been established to modernize existing prisons and to build new ones, over the next

five years. At the present time, however, it is estimated that the prison population stands at 38,000 whereas there is accommodation for around 28,000 people. The Special Rapporteur was able to see for himself the dilapidated state of the places of detention, the cramped and over-crowded prison cells with, for example, a cell of about 25 m^2 accommodating 27 detainees in the Jilava prison. The unsatisfactory health arrangements, the poor ventilation, the shortage of bunks (in one instance, the Special Rapporteur saw that six detainees had only four bunks at Police Section No. 10 in Bucharest), solitary confinement in tiny dungeons as a punishment and the poor food make detention particularly harsh. In addition to that, people in pre-trial detention are frequently kept in the same premises as convicted prisoners, and usually wear prisoners' uniforms.

77. Many people also spoke about attempts, in the course of 1991, to exert pressure or intimidation, in particular against leading political figures, human rights activists, journalists, students, trade-unionists and members of ethnic minorities. Several cases of physical assaults were reported especially during the months of January, February and April 1991, against intellectuals and journalists. Certain prominent opposition figures regularly receive threatening letters or telephone calls, including death threats or threats of reprisals against members of their families. However, a number of the persons questioned about this were of the opinion that these practices appear to have abated in recent times.

78. As during the previous period (E/CN.4/1991/30, para. 78), the Special Rapporteur often heard the view expressed that the cases of the former members of the Securitate had not been settled in a clear-cut way and many of its former cadres continued to carry out surveillance and intimidation based on the old methods. In that connection, several persons said that they were suspicious of the aims and methods of the Romanian Information Service. They cited the persistence of former practices and expressed the fear that some of the provisions of Act No. 51 of 29 July 1991 concerning national security and the bill on the organization and operation of the Romanian Information Services might be interpreted too broadly and thus contravene individual rights and freedoms. Furthermore, a good many people said that they were certain that their telephones were still being tapped, that the secrecy of correspondence was not always respected and that, in general, they continued to be under surveillance. The numerous and specific individual instances brought to the attention of the Special Rapporteur have convinced him that these allegations were not unfounded. Lastly, the opinion was expressed that the authorities were to some extent responsible for the continuing climate of suspicion and intolerance in failing to condemn firmly enough the attempts to intimidate persons who expressed different opinions from those of the majority. It was also emphasized that more effective measures to purge the persons responsible for abuses committed in the past would help to establish an atmosphere of trust conducive to tolerance and the expression of a democratic pluralism.

B. Administration of justice

79. The area of the administration of justice, which gave rise to particular concern because of its serious shortcomings during the former regime, has undergone a number of changes in law and in practice in recent times.

80. The Constitution and several bills of ordinary law deal with the various aspects of the administration of justice. Title II, chapter VI, of the Constitution which deals with the judiciary lays down the principle of the independence of judges (art. 123) and their irremovability (art. 124). Judges are to be appointed by the President of the Republic, at the proposal of the Supreme Council of Justice, a new body made up of judges elected for four years by a joint session of the two Chambers (art. 132). The considerable powers previously wielded by the Procurature are now deemed to have been excessive, consequently, the legislators have created a very specific role for the Prosecutor's Department. According to the provisions of article 130 of the Constitution, the Prosecutor's Department represents the overall interests of the society. It safeguards both the judicial system and civil rights and freedoms. Prosecutors who, under the former legisation were accountable to the Ministry of the Interior will now be under the administrative authority of the Minster of Justice (art. 131 of the Constitution; arts. 29 to 34 of the bill on organization of the judiciary).

81. Under article 125 of the Constitution, justice will be dispensed by the Supreme Court of Justice and the other bodies established by law. These other bodies, according to the bill on organization of the judiciary (art. 7), will be mainly the courts of first instance and the courts of appeal. In addition, by virtue of the same bill, the Supreme Court of Justice will no longer have a military branch.

82. The guarantee of the rights of the individual has an important place in the amendments scheduled or introduced to the legislation concerning the administration of justice. Article 21 of the Constitution establishes the principle of the free access of everyone to justice. Article 23 guarantees the inviolability of individual freedom and security of the person; according to the provisions of this article, police custody may not exceed 24 hours; arrests shall be made by a warrant issued by a judge, for a maximum period of 30 days. The person arrested may lodge a complaint with the judge about the legality of the warrant and the judge is bound to take a decision by a substantiated order. The decision whether or not to extend a period of arrest rests with the court. A person who has been arrested must be informed immediately, in a language which he understands, of the reasons for his arrest and of the charges against him; he must be informed of these charges only in the presence of a lawyer. A person in pre-trail detention may apply to be released under judicial supervision or on bail. Article 24 of the Constitution guarantees the right to defence and provides for the parties to be assisted during the trial by a lawyer of their choice or by an officially appointed lawyer. The proposed amendments to the Code of Criminal Procedure to ensure increased guarantees of individual freedoms (E/CN.4/1991/30, paras. 84 to 86), took effect with the entry into force with Acts. No. 20 of 9 October 1990 and No. 32 of 16 November 1990 amending and supplementing certain provisions of the Code of Criminal Procedure. In this area also, a new bill amending and supplementing certain provisions of the Code of Criminal Procedure and a bill on extinctive prescription are currently under consideration.

83. Efforts have also been made to strengthen the remedies and procedures to protect citizens against wrongful judicial and administrative acts. Article 48 of the Constitution provides that any person whose rights have been

infringed by a public authority, or through an administrative act or because his petition was not answered within the time-limit prescribed by law is entitled to recognition of the right demanded, nullification of the act and compensation for damages sustained. The State bears patrimonial responsibility for any damages caused by judicial errors committed in criminal cases. Title II, chapter IV, of the Constitution deals with the new institution of ombudsman, appointed by the Senate for a term of four years to protect the rights and freedoms of citizens (art. 55). The ombudsman performs his duties ex officio or at the request of the injured parties (art. 56); he submits to Parliament reports which may contain recommendations designed to protect the rights and freedoms of citizens (art. 57). In the area of ordinary law, Act No. 29 of 7 November 1990 on the system of administrative litigation, enables citizens to challenge administrative decisions before a judicial authority.

84. With respect to prison administration, reference has already been made to a law which came into force in January 1991 bringing this administration under the responsibility of the Ministry of Justice as well as to the bill which was drafted on the execution of penalties (see para. 76 above).

85. Although considerable efforts have been made to improve the legislative framework and to adapt it to a new concept of the administration of justice more in keeping with the recognized human rights standards, the senior officials interviewed by the Special Rapporteur pointed out that they were still facing many practical problems. They attribute these difficulties, already mentioned in the previous report (E/CN.4/1991/30, paras. 90 and 91) mainly to the rise in the crime rate, the shortage of qualified judges, jurists and lawyers, the lack of the material resources necessary, for example, to improve the prison system (see para. 76 above), as well as the persistence among certain officials responsible for the administration of justice of old reflexes inherited from the past. A concrete example given was the shortage of lawyers, which, in some cases, makes it impossible in practice to ensure that officially appointed lawyers are present to assist the persons arrested from the time of their arrest; by the same token, the acts of brutality committed against prisoners by certain police officers and prison wardens may be due to the lack of qualified personnel which makes it impossible to replace all the old staff. Lastly, the slowness of certain juidicial procedures is apparently due to the shortage of competent cadres and to the difficulties in identifying guilty parties, such as the lack of tangible evidence, the reluctance to lodge complaints or the unwillingness of some witnesses to testify.

86. In reply to a number of practical questions concerning the judicial follow-up to various incidents which occurred in 1990 and 1991, the Special Rapporteur was provided with a certain amount of information by the senior officials. It was stated, for example, that the investigation into several complaints made of ill-treatment by the police during the demonstrations of 18 February 1990 in Bucharest (E/CN.4/1991/30, para. 72) was being pursued. With respect to the judicial action taken following the events of June 1990 (E/CN.4/1991/30, paras. 92 and 95), the senior officials of the Prosecutor's Department said that it had been possible to establish the guilt of some people and that they had been sentenced; two cases were being tried in the court of the municipality of Bucharest. However, in most cases, it had not

been possible to identify the persons responsible for the homicide, injury and destruction. The investigation undertaken against certain persons, including members of the student movement and its President, Mr. Marian Munteanu, had been closed for lack of evidence. In one case (that of Mr. Leon Nica, President of the Social Democrat Party, who had been arrested and held for a period of 10 days), compensation had been obtained from the State following a complaint made for unlawful detention. However, regarding the events which occurred in Tirgu Mures in March 1990, (E/CN.4/1991/30, para. 95), the Prosecutor's Department stated that, it did not have sufficient evidence to support the charges, and had not ordered an investigation. With respect to the incidents in which the gypsy community had been the victims in Kogalniceanu in the region of Constanta in October 1990 (E/CN.4/1991/30, para. 95), the inquiry is continuing and seven or eight of the people who instigated the violence are reported to have been identified. An inquiry into a number of similar incidents which occurred in 1991 (see para. 135 below) is said to be making slow progress because of the difficulty in identifying the persons responsible. Lastly, regarding the incidents which occurred in Bucharest in September 1991 and resulted in 3 dead, more than 500 casualties as well as considerable material damage, inquiries are under way and some of the perpetrators have been identified; one has already been prosecuted.

87. In his conversations with leading unofficial figures, the Special Rapporteur often heard the view expressed that justice was not administered entirely impartially, but to some extent continued to be subject to the executive power. In that connection, mention was made of the slowness of certain investigations or the fact that the investigations of persons protected by the Government often came to nothing. It was also said that, in many cases, the injured parties did not lodge a complaint because they had no confidence in the integrity of the judges or the impartiality of the institutions. There was a reluctance to identify or prosecute the perpetrators of serious abuses committed under the previous regime, including the law enforcement authorities or the judges guilty of such abuses. It was also pointed out as it had been previously (E/CN.4/1991/30, para. 95), that there was a tendency in the administration of justice to discriminate preferably against members of the opposition or persons belonging to minorities. In that regard, it was pointed out that Decree No. 153/1970 whose very vague provisions had in the past made it possible to initiate legal proceedings, especially for "violation of civic duties", against persons who were critical of the Government's policy, had still not been abolished, although it was recognized that the decree had hardly been applied in recent times.

88. It was pointed out that despite the progress achieved in the area of legislation, the protection of the rights of the individual were not satisfactorily guaranteed in all cases. It was fairly commonplace for people to be wrongfully arrested and to be mistreated at the time of arrest and during detention, in particular while under pre-trial detention. The obligation stipulated by the law to guarantee the accused person's right to defence and to inform the accused or the defendant of his right to be assisted by a defence counsel before making any statment is not always fulfilled. According to the information received, persons arrested are not necessarily informed of this right and sometimes the officially appointed lawyers are not available when the first statement is made (see para. 85 above). It was also

reported that persons arrested were often subjected to pressure or ill-treatment during interrogations in order to extract declarations or forced confessions from them; and that persons whose behaviour did not constitute any danger were sometimes brought before the courts chained and handcuffed.

C. Freedom of movement; right of asylum; right to a nationality

89. The right to freedom of movement which was severely restricted under the previous regime has been restored, as a result of the abolition of the measures that impeded it and the adoption of several decrees (E/CN.4/1991/30, paras. 97 to 100).

90. Article 25 of the Constitution guarantees the right to freedom of movement, within the country and abroad (para. 1); in paragraph 2, every citizen is guaranteed the right to establish his domicile or residence anywhere in the country, to leave and to return to his country. Article 19 prohibits the extradition or expulsion of Romanian citizens from Romania. However, it was pointed out to the Special Rapporteur that, in practice, border guards sometimes obstructed the free movement of citizens.

91. The provisions of article 18, paragraph 2, of the Constitution provide that the right of asylum shall be granted and withdrawn in the conditions prescribed by the law and in respect for the international treaties and conventions to which Romania is a party. In that connection, Romania has acceded to the Convention relating to the Status of Refugees and to the Protocol relating to the Status of Refugees (Act No. 46 of 4 July 1991).

92. With regard to the right to a nationality, Act No. 21 on Romanian citizenship was adopted on 1 March 1991. Regarding citizenship, article 5 of the Constitution provides as follows:

> "1. Romanian citizenship shall be acquired, retained or forfeited in the circumstances specified by the fundamental law.
>
> 2. Romanian citizenship may not be withdrawn from anyone who has acquired it by birth".

D. Freedom of thought, conscience, religion or belief

93. As the Special Rapporteur had noted in the addendum to his first report (E/CN.4/1990/28/Add.1) and in his second report (E/CN.4/1991/30), freedom of conscience and religion, which had been restricted under the former regime, has been fully restored.

94. During the recent period, a number of measures have been taken in the area of freedom of worship. There have been various laws concerning the introduction of religious education classes in the schools, the establishment of theological institutions and seminaries for various religious denominations; the salary of Church staff, the acquisition and purchase of building materials for the Churches and building funds for places of worship.

95. Under article 29 of the Constitution, freedom of thought, opinion and religion shall be guaranteed and may not be limited in any way; no one may be compelled to adopt an opinion or adhere to a religion contrary to his convictions; freedom of conscience shall be expressed in a spirit of tolerance and mutual respect. Religious denominations shall be free and autonomous vis-á-vis the State; however, they shall enjoy the support of the State, including the use of the facilities set up to provide religious assistance in the army, in hospitals, in prison institutions, in asylums and in orphanages. Article 29, paragraph 6 states that parents or guardians shall be entitled to assure the education of juveniles for whom they are responsible, in accordance with their own beliefs. Lastly, in article 32, paragraph 7, the State guarantees freedom of religious education in accordance with the specific needs of each denomination. In the public schools, religious education is organized and guaranteed by the law.

96. A bill on religious denominations and religious freedom has been drafted with the participation of representatives from the 15 officially recognized denominations. According to the provisions of this draft, all denominations shall be equal vis-à-vis one another and in the eyes of the law and the State. They shall be free to organize and pursue spiritual, cultural, educational and charitable activities; they may establish and organize educational institutions, monastic establishments, foundations, charitable institutions, associations and congregations, in conformity with existing legislation. Churches may make use of the mother tongue of their members in their worship and their activities; official correspondence between the Churches and the State shall be conducted in the Romanian language. Churches shall be entitled to organize the religious education of their members in the public education institutions, hospitals, asylums, orphanages, rehabilitation centres for juveniles and prisons. They may organize and own their own mass communication media. The bill also provides the possibility for the Churches to establish seminaries, acquire property, maintain relations with foreign Churches as well as with world inter-faith organizations and to join international religious organizations. The State is required to make land available free of charge to the Churches for the construction of places of worship and philanthropic institutions. Act No. 18/1991 on the land reform fund also provides that an area of arable land of up to 5 hectares shall be allocated to each parish and up to 10 hectares of agricultural land to monasteries.

97. Religious activities are conducted within 15 recognized denominations and some 60 existing religious associations. Since 1990, the construction of around 300 new places of worship and the restoration of some religious buildings have been undertaken, through a financial contribution from the State; a number of theological institutes and seminaries have been set up for various denominations. The churches publish a variety of periodicals including several in the languages of the religious minorities; prayer-books, religious education handbooks and other religious publications are published in several languages.

98. The actual application of certain measures appears to have encountered some difficulties. For example, the organization of religious education in schools has led to problems because, except for the majority Orthodox Church, pupils belonging to other denominations do not always form compact groups

within the same school and are often widely scattered. In such situations, it has been agreed that the pupils should go to their religious institutions for religious instruction. Another problem encountered was the inaccurate interpretation of the legal provisions concerning the optional nature of religious instruction in schools. In fact, although the attendance of pupils in religious instruction classes is optional, the school establishments, for their part, are required to include these classes in the school curriculum; some of them have sometimes neglected to do so, claiming that they are optional. The resurgence of the phenomenon of anti-semitism, notably in the form of the desecration of cemetries and synagogues, was also mentioned; a campaign of anti-semitism is allegedly being pursued in certain of the media, especially in the Romania Mare and Europa newspapers.

99. The situation regarding the property of the Churches which had been confiscated under the former regime also poses many practical problems, especially since the property in question includes not only places of worship but also charitable institutions, hospitals, hospices, teaching institutions and so on. The process of restitution is being conducted in stages and will be a lengthy and sensitive undertaking. The most disturbing situation in that regard is that of the Romanian Greek (Uniate) Catholic Church. In his previous report (E/CN.4/1991/30, para. 106), the Special Rapporteur alluded to the impasse which had been reached on that question, on account of the seemingly irreconcilable positions of the Orthodox Church (to which most of the property of the Uniate Church had been transferred after December 1948) and the Romanian Greek (Uniate) Catholic Church. Unfortunately, the situation hardly seems to have improved over the recent period and the positions are still divergent. According to the provisions of Decree-Law No. 126 of 24 April 1990 (see E/CN.4/1991/30, annex IV), the assets seized by the State in 1948 will be restored to the Uniate Church and the legal status of the places of worship and of the parish houses which belonged to the Uniate Church and were allocated to the Orthodox Church will be determined by a joint commission composed of representatives of the two religious confessions, taking into account the wishes of the members of the communities holding the properties in question. The leaders of the Orthodox Church invoke the Orthodox canon law under which churches belong to their members, and emphasize the fact that, during the decades since 1948, the upkeep of the places of worship and the maintenance and restoration of the property made over to the Orthodox Church have been undertaken by the members of that Church. They advocate a division of the disputed property on the basis of the principle of the will of the majority of the members in each case. The leaders of the Romanian Greek (Uniate) Catholic Church, for their part, assert that of the 2,500 or so churches in the keeping of their Church before December 1948, only about 20 have been returned and that in the majority of cases this restitution was carried out only due to the strong determination of their members rather than to any initiative by the Government or the Orthodox Church. The Uniate Church refuses to apply the principle of the division of the disputed property in accordance with the principle of the will of the majority of the members: it considers that after four decades of clandestine operations, it is not in a position to make its doctrines and its principles sufficiently well known, because of the pressure and the manipulations to which it claims it is being subjected by the hierarchy of the Orthodox Church. It denounces the campaign of denigration being waged against it in certain of the media, in particular television, which it accuses of

disseminating biased information about the Greek Catholic Church. The leaders of the Uniate Church consider that it is the responsibility of the State to ensure the full restitution ("restitutio in integrum") of the property which was confiscated from it in 1948 and suggest that, in places where there is only one church, the principle of dual utilization should be applied, with the allocation of alternative hours for services. These leaders say that it is unfortunate that the recommendations of the Parliamentary Commission of Inquiry set up in 1990 to try and settle the differences between the two Churches in Baia Mare (E/CN.4/1991/30, para. 106) have had no impact. They point to a number of recent incidents in which members of the Uniate clergy and believers were reported to have been molested, threatened, and had their houses attacked because they wanted to practise the Greek Catholic rite.

E. Freedom of opinion and expression

100. Recent information made available to the Special Rapporteur confirms that freedom of opinion and expression has in fact been fully restored. This fact was already noted in the previous report (E/CN.4/1991/30, para. 107).

101. Article 30 of the Constitution guarantees the inviolability of the freedom of expression, thought, opinions and beliefs (para. 1) and forbids censure of any kind (para. 2). However, the law is bound to prohibit the defamation of the country and the nation, the advocacy of a war of aggression, of national, racial, class or religious hatred, incitement to discrimination, to territorial separatism, public violence or obscene demonstrations which are contrary to accepted standards of good behaviour (para. 7). As to the concept of "defamation of the country and the nation", according to the Romanian officials questioned by the Special Rapporteur, this should be construed only as a means of preserving the national entity from being undermined; such a restriction would not apply to personal criticism of the country's leaders which is freely permitted within the limits prescribed by the law. Article 31 of the Constitution relating to the right to information provides that the mass media are under an obligation to ensure that the public is accurately informed (para. 4). The public radio and television services are autonomous; they are obliged to guarantee that the major social and political groups are allowed broadcasting time (para. 5). A bill on audio-visual media was submitted to the Parliament last year and is still under consideration.

102. The material and practical problems hindering certain press organs (E/CN.4/1991/30, para. 109) appear to be continuing, mainly because of the shortage of paper and its increase in price caused by the excessive proliferation of publications, as well as printing and distribution difficulties. Efforts have been made to set up printing works and private distribution networks and one association for the distribution of independent publications has been established. Government decisions No. 170 and No. 171 of 7 March 1991 deal with the creation of autonomous printing works administrations and joint stock trading companies in the sector of the printing and kindred trades. Nevertheless, there are still practical difficulties; the State is alleged to maintain a virtual monopoly over the distribution of paper and the use of printing presses. At the present time, the newspapers close to the Government are reported to enjoy a better distribution service than certain opposition papers, particularly in the provinces; there is reported to be no regular distribution of opposition

newspapers to their subscribers, partly because of the logistical difficulties of the Postal Administration but also because of the unwillingness of some public officials to forward any publications which express opinions not in line with those of the majority; it is also alleged that, in the provinces, under pressure from the local authorities, some newspapers are not available on the news-stands. According to senior officials of the Ministry of Communications, joint commissions with the participation of the editorial staff of the publications concerned have been set up to study at first hand the problem of unsold newspapers.

103. In his previous report (E/CN.4/1991/30, paras. 110 and 111), the Special Rapporteur had noted that certain reflexes and patterns of behaviour inherited from the past were still apparent, in the form of distrust and marked hostility towards divergent opinions. The information concerning the recent period indicates that such attitudes may still be observed. Many persons, especially journalists, intellectuals, students, opposition figures, members of minorities or human rights activists have reported that until recently they had regularly been threatened with death or subjected to various kinds of pressure; several cases of anonymous physical attacks or acts of police brutality occurred in January, February and April 1991; the main targets of these attacks were journalists, intellectuals, trade unionists and members of opposition organizations. Allegedly, other more subtle forms of pressure are frequently exercised, such as administrative harassment or difficulties at the professional level. It would seem, however, that this intimidation has lessened in frequency and intensity in recent times; the view was expressed that this trend would suggest that there is less danger of this post-totalitarian climate of intolerance degenerating in the future into outbursts of violence, of the kind that had occurred in June 1990.

104. Many of the persons interviewed by the Special Rapporteur said that it was unfortunate that some of the media manipulated public opinion, by maintaining and stirring up social or ethnic tensions. On the whole, they regretted that the very great freedom enjoyed by the press, reflected on the appearance of thousands of publications of all kinds, and led to abuses by permitting the most extreme and least objective opinions to be expressed and allowing slanderous statements to appear in the columns of certain newspapers. The law does not, at present provide for the right of reply, which is granted only at the discretion of editors themselves. Many people felt that new regulations needed to be drafted which, while not muzzling the press, would make it possible to restrict and punish abuses and defamatory or slanderous statements. It was also pointed out that the relevant provisions of the Penal Code were not usually applied effectively. The case was cited, for example, of the newspaper Romania Mare and its editor-in-chief Vadim Tudor, against whom 82 complaints have been lodged on various grounds such as slander, or incitement to racial hatred, but of which only 2, so far, had been brought before the courts. Many of the persons, whom the Rapporteur interviewed, said that they felt that the authorities bore some responsibility for this continuing climate of intolerance maintained by some of the media, against persons who expressed contrary views or ethnic groups or social minorities; not only did the authorities fail to distance themselves sufficiently from the slander campaigns or the incitement to dissension, but sometimes seemed to encourage them; thus, the extremist newspaper Romania Mare had been awarded a prize recently by the Minister of the Interior.

105. Numerous reservations, referred to earlier (E/CN.4/1991/30, para. 110), continue to be expressed over the attitude of Romanian Television executives, who are accused of lack of objectivity, and of being responsible for covering events tendentiously and selectively, with a bias in favour of the authorities. Attention was drawn to certain attempts to fan latent conflicts artificially and to divert attention from the real problems. Consequently, the television allegedly gave a distorted and unfavourable picture of certain personalities or of certain ethnic minorities, such as the Gypsies and Hungarians, or religious minorities, such as the members of the Romanian Uniate Church. A recent instance that was given was the substantial media coverage given to the parliamentary debates on the events in Covasna and Harghita which allegedly contributed to reviving the incomprehension and hostility between the Romanian and Hungarian ethnic groups (see para. 132 below). It was hoped that the privatization of certain television channels would bring greater pluralism in the sphere of information. According to the Chairman of Romanian Radio and Television, the second television channel will soon have a semi-private status, with 50 per cent participation by a British television group; in addition, the Independent National Television Company (SOTI) should soon obtain authorization to broadcast on an experimental basis.

F. Right of assembly and association; participation in the conduct of public affairs

106. The freedoms of assembly and association, restored following the change of regime (see E/CN.4/1990/28/Add. 1, para. 53), are guaranteed in principle. Articles 36 and 37 of the Constitution are given over to the freedom of assembly and the right of association. Article 36 provides that meetings, processions and all other forms of assembly are free, but may only be organized and take place in a peaceful manner and without weapons of any kind. A law concerning the organization and subsequent course of public gatherings has recently been adopted (Act No. 60 of 23 September 1991). It stipulates the general conditions in which such gatherings are to take place, their prior announcement to town halls, the obligations of organizers and participants, in addition to those of the town halls concerned, the conditions for maintaining order and possible penalties. The right of association is guaranteed under article 37 of the Constitution, pursuant to which citizens may freely join political parties, trade unions and other forms of association (para. 1). According to article 37, paragraph 2 parties or organizations which, by virtue of their aims or activities, militate against political pluralism, the State principles of law, or the sovereignty, integrity or independence of Romania, are non-constitutional. Political pluralism is dealt with in article 8 of the Constitution, in accordance with which it is both a condition and a guarantee of constitutional democracy (para. 1). Pursuant to paragraph 2 of the same article, political parties contribute to the definition and expression of the political will of citizens, while respecting national sovereignty, territorial integrity, judicial order and the principles of democracy.

107. Political rights are the subject of articles 34 and 35 of the Constitution, which set out the conditions regarding the right to vote and the right to be elected.

108. The Constitution advocates the principles of local autonomy and the decentralization of public services in the territorial administrative units (art. 119). It provides for the establishment of elected local councils and elected mayors in communes and towns, in addition to that of elected departmental councils (arts. 120 and 121); the Government is to appoint a prefect in each department and in the municipality of Bucharest (art. 122).

109. According to the information collected by the Special Rapporteur, a number of peaceful demonstrations and assemblies were the scene of unwarranted police violence and provocation, notably on 11 to 13 January, 22 April and 6 September 1991. The fact that the forces of order used excessive measures to disperse some demonstrations, particularly during the events in late September 1991, was equally deplored (see also para. 73 above).

110. With regard to the activities of various parties and associations, a very substantial increase in these movements was noted, which in principle have complete freedom of action. Several people stressed, however, that the activities of the opposition parties and organizations were hampered by technical and material problems; the registration of independent articles of association was also delayed on occasion by administrative harassment. Finally, the members of various independent movements and associations continued to be the target of slander campaigns, threats and various form of pressure (see preceding paras. 103 and 104).

111. As for local structures, in respect of which elections are envisaged before the spring of 1992 (following the referendum on the Constitution, the adoption of a new electoral law and the organization of the electoral campaign), the hope was expressed that they would undergo serious reform. Several of those interviewed by the Special Rapporteur believed that the current local administration, appointed by the Government following the elections of May 1990 and consisting mainly of ex-cadres of the former regime, should be completely changed and replaced by new officials more representative of democratic institutions and the ethnic distribution of the population.

G. Right to work; trade union rights

112. The recent period has been marked by a quickening in the pace of the Romanian economy's transition towards a market economy; this in-depth change has needed the preparation of a suitable legislative framework in the area of labour law and social welfare. Various laws on the subject have recently been adopted. They include Act No. 30 of 15 November 1990 on the recruitment of wage-earners in accordance with their skills; the Act of 15 January 1991 concerning the social welfare of the unemployed and their vocational reintegration; Act No. 13 and Act No. 14 of 8 February 1991 concerning respectively collective labour contracts and wages; Act No. 15 of 11 February 1991 on the resolution of collective labour disputes; Act No. 31 of 22 March 1991 restricting the working-day to eight hours for wage-earners working in difficult or dangerous conditions; Act No. 51 of 29 July 1991 on social security; Act No. 54 of 1 August on trade unions and various government decisions and ministerial orders concerning the unemployed.

113. Pursuant to the provisions of article 9 of the Constitution, trade unions should form and pursue their activity in accordance with their own regulations, in the conditions determined by law; they help to defend the rights of wage-earners and the promotion of their vocational, economic and social interests. Trade union freedom is also guaranteed under article 37, paragraph 1, of the Constitution, where it is stipulated that citizens may freely join trade unions in particular. Articles 38 to 41 deal with labour and the social welfare of labour, the prohibition of forced labour, and the right to strike. Article 38 guarantees freedom of choice of profession and work place, the social protection of wage-earners, the average eight-hour duration of the working-day, equal pay for men and women, the right to collective negotiations on employment issues and the mandatory nature of collective bargaining.

114. In practice, the accelerated transformation of the economic structures has brought about a significant change in working conditions. The privatization of some State enterprises and the criteria of competitiveness imposed by the market economy entail a high social cost, reflected mainly in the rise in unemployment. It was stressed that working conditions in general continue to be extremely poor, with various enterprises in a state of decay, as well as badly equipped and poorly heated in winter. It was said that job insecurity sometimes made it easy for various forms of pressure to be exerted in the work place on dissidents or independent trade unionists, the aim being to bring them back into line or prompt their resignation. Independent trade unionists were reported to have been subjected to intimidation and administrative harassment; a number of people voiced the opinion that the independent trade unions did not yet have insufficient means of action available to them. Others held the former Government (of Mr. Petre Roman) responsible for the incidents of September 1991 concerning the arrival in Bucharest of miners from the Jiu valley, citing the refusal of the authorities to enter into negotiations with the trade union representatives of the miners in accordance with the procedures provided for under the law on collective labour disputes in an attempt to find a solution to their wage and social claims.

115. As for the question of the trade union funds inherited from the former trade union grouping disbanded after December 1989 (E/CN.4/1991/30, para. 122), senior officials of the Ministry of Labour and Social Welfare underlined that it was extremely difficult to redistribute the inherited funds due to the increase in the number of trade unions; at present, there are 13 confederations and some 2,500 non-affiliated trade unions. An agreement has been drawn up by seven confederations in order to guarantee temporarily the joint management of the inherited trade union funds.

116. As for vocational re-instatement and the compensation to be granted to those persons who were wrongfully dismissed under the former regime, the Special Rapporteur was told that of the 14,000 applications received, 11,000 had been processed and 3,000 were still in the process of being settled.

H. Right to an adequate standard of living; protection of childhood

117. The right to an adequate standard of living is referred to in article 43 of the Constitution; according to paragraph 1 of the article, the State is required to take economic development and social welfare measures such as to guarantee citizens a decent standard of living; paragraph 2 guarantees the right to retirement, paid maternity leave, medical help, assistance for the unemployed and other forms of social assistance. Under article 46 of the Constitution, special protection is envisaged for the disabled. The right to health cover is also guaranteed under article 33 of the Constitution, which provides for the organization of medical assistance and the social insurance system.

118. In practice, the setting up by the Romanian Government of an extensive economic liberalization programme entailing radical reforms, and the serious problems inherited from the past in this respect, make for an extremely worrying socio-economic situation. The misgivings expressed the previous year that these reforms would initially cause a decline in the already inadequate standard of living have unfortunately materialized. Recently, there has been a rise in unemployment, a surge in the price of current consumer items, and foster impoverishment of the most disadvantaged groups. While a number of social welfare measures have been initiated, they are nevertheless insufficient to curtail the effects of inflation and unemployment. In the context of the new land reform law, the implementation of large-scale agricultural reform is a long and complex process which, in the short term, is bad for agricultural cost-effectiveness. Food shortages remain a real threat, particularly due to the lack of fuel and spare parts for farm equipment. The persistent heating problems threaten to cause serious difficulties this winter.

119. In the health sector, the poor quality of care due to the shortage of medicines, health equipment, medical equipment and qualified staff, led to a strike by doctors calling for suitable financial and material resources. Emphasis was placed on the vulnerability of certain groups, particularly children and the elderly, who are the first victims of these shortages. The situation of the mentally ill remains equally unsatisfactory due to the extremely low standard of psychiatric treatment. Efforts have been made to remedy the situation and, more generally, to assist the disabled; a State Secretariat for the disabled was set up under government decision No. 1161 of 1 November 1990. Particular attention has been given to the rights and social benefits of the disabled, notably thanks to international asssistance in this area. Two bills are currently under consideration on the social welfare of the mentally ill and the placement of children in institutions.

120. Child and youth welfare also received considerable attention from the authorities, in view of the recent highly critical situation of the 150,000 disabled children who are in-patients at specialized institutions and of children placed in orphanages. Article 45, paragraph 1, of the Constitution stipulates that children and young people enjoy special protection and assistance in exercising their rights; under the provisions of paragraph 2, the State accords child benefit and assistance for the care of sick or disabled children.

121. The dire material conditions and the lack of competent socio-medical staff sometimes have a dramatic impact on the physical and mental health of children. To cope with this situation, various forms of action have been taken by the Romanian authorities (E/CN.4/1991/30, para. 125). The combined effect of international solidarity and national efforts have slightly improved the lot of children in institutions, with better accommodation and staffing. Nevertheless, the overall situation of the children remains difficult due to the quickening rate of impoverishment of the disadvantaged groups, as a result of the socio-economic situation, of which children are among the first victims.

122. As for the international adoption of Romanian children, which had given rise to some trafficking, with children as the unfortunate target, Act No. 11/90 on adoption, finalized and amended by Act No. 47/91, provides a number of guarantees, such as the approval of the adoption by the legal authorities, the supervision and assistance of the Romanian Committee for Adoption in order to ensure that adopted minors have sufficient guarantees, and the suppression of trafficking in adopted children.

I. Right to education: cultural rights

123. Article 32 of the Constitution addresses the right to education, which is guaranteed by compulsory general education, secondary education, vocational education, higher education and other forms of instruction and further training. The language of instruction is to be Romanian, as well as, in certain circumstances, a language of international currency. Article 32 guarantees the right of persons belonging to the national minorities to cultivate their mother tongue and be educated in it. It also guarantees the principle of university autonomy. A bill on education is in the process of being drafted. In order to guarantee, in the meantime, the requisite legislative framework, government decision No. 461 of 30 June 1991 was approved to regulate the organization and functioning of teaching in Romania for the academic year 1991/92.

124. A number of private educational establishments are already operational at the moment, even though recognition of the diplomas awarded by such institutions is to be governed by the provisions of the future education law. In practice, the material difficulties already described in the previous report in the area of education (E/CN.4/1991/30, para. 130) continue to be felt, including the lack of premises and qualified teachers, the financial restrictions affecting teacher-training programmes, and the inadequacy and poor quality of educational materials. Classes often continue to operate on a shift system, generally on the basis of two shifts a day. The persistent ingrained reflexes and intolerant attitudes of teachers were also raised. Moreover, it was noted that some new principals, approved by their colleagues, are alleged to have been challenged by the authorities on the basis of slander and false allegations.

125. Various measures have been taken to secure the right of persons belonging to minorities to be educated in their mother tongue. According to statistical data from June 1991, education is given in Hungarian in 2,340 educational units at differing levels; at university level, various subjects are taught in

Hungarian at the Babes-Bolyai University in Cluj-Napoca, at the Institute of Medicine and Pharmacy in Tirgu Mures and at the Theatre Institute in Tirgu Mures. The network of educational institutions using German has grown smaller now that a large proportion of the ethnic German population has left the country; nearly 19,000 students are reported to be taking courses in institutions where the teaching was dispensed in German. To a lesser degree, other minorities also have establishments with units or sections where the instruction is given in their languages; this is the case for the Serbian, Ukrainian, Slovak, Czech and Bulgarian minorities. For other smaller minorities, research groups have been set up to give children belonging to those ethnic groups an opportunity to study their mother tongue (Turkish, Lippovian and Polish). As for the gypsy minority, plans have been made to train teachers in the gypsy language and prepare appropriate textbooks. Emphasis has been given to the need to take account of the sometimes contradictory wishes of the members of this minority, namely, on the one hand, respect for the specific qualities and cultural traditions of the gypsies, and on the other hand, the desire shown by some for integration.

126. Despite these positive measures, problems and claims persist in practice. It was stressed that, in contrast to the classes conducted in Romanian, which can be held without being subject to any quota, in order to be set up, classes in minority languages must have a minimum of four pupils at primary level and ten at secondary level, failing which, they require authorization from the Ministry of Education. It was also regretted that the application for the University of Cluj to become a fully-fledged Hungarian institution has been turned down for the time being. Some members of the Hungarian minority believed that the experience of mixed schools holding classes in both Romanian and Hungarian proved negative in that straightforward clashes of a personal nature between pupils or teachers often degenerated into inter-ethnic quarrels. They also regretted that, even in schools where teaching was in the minority languages, subjects such as history or geography were taught in Romanian. They expressed the hope that the provisions of the future education law would make it possible to establish private universities where Hungarian was the language used.

127. As regards culture, the people officially interviewed by the Special Rapporteur stressed that government policy was based on the principle of cultural autonomy. The privatization of some of the publishing houses which remained under the control the Ministry of Culture is under consideration, and the authorities are encouraging the setting up of a more diversified system of disseminating publications. At the moment, paper is still allocated by the Ministry of Culture, which tries to give priority to printing books. Various measures continue to be taken to encourage the cultural expression of the minorities, who have a special department within the Ministry of Culture (also E/CN.4/1991/30, para. 134). Minority cultural magazines are financed by the Government, and minority cultural foundations receive encouragement and subsidies, in the context of a cultural policy based on respect for the identity of each minority.

128. In the audio-visual sphere, there are radio stations which broadcast regularly in Hungarian and German. As for television, a three-hour weekly programme was reserved for the Hungarian minority, but in February 1991, half of this viewing time was transferred to channel two whose range is limited to

a 160-km radius around Bucharest. The Cluj transmitter also broadcasts three hours a week in Hungarian, but its range is again very limited. The decision to transfer to a channel with a limited range has been criticized by members of the Hungarian minority and part of the opposition, who regard it as an attempt on the part of the leaders to inhibit the expression of Hungarian cultural identity and political pluralism. The other sizeable minorities also have televised programmes (two hours weekly for the German minority; an hour and a half for the gypsies on channel one and two and a half hours on channel two).

J. Rights of persons belonging to minorities

129. The previous report of the Special Rapporteur stressed that there had been a definite improvement in the status of the national minorities in Romania as compared with the previous period (E/CN.4/1991/30, para. 135). It was nevertheless noted that "notwithstanding these positive developments, the atmosphere of distrust and mutual misunderstanding among various national ethnic groups ... seems to have persisted and in some cases worsened substantially" (E/CN.4/1991/30, para. 136). This finding remains true to date in the light of information which the Special Rapporteur was able to collect on the recent period, and concerns particularly the situation of the Hungarian and gypsy ethnic groups. Certain specific aspects of the question of minorities already covered under the topic of education and cultural rights (see preceding paragraphs 125 to 128) will not be raised at this juncture.

130. The new Romanian Constitution contains various provisions directly concerning or having an impact on the status of minorities. Under article 1, paragraph 1, Romania is a national, sovereign and independent, unitary and indivisible State. The basis of the State is the unity of the Romanian people (art. 4, para. 1); Romania is the common and indivisible homeland of all its citizens, without distinction of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, fortune or social origin. The right of persons belonging to national minorities to conserve, develop and express their ethnic, cultural, linguistic and religious identity is recognized and guaranteed by the State (art. 6, para. 1); the measures for protecting this identity must comply with the principles of equality and non-discrimination in relation to other Romanian citizens (art. 6, para. 2). The official language is Romanian (art. 13), which is also the official language of judicial procedure (art. 127, para. 1). The right of persons belonging to minorities to cultivate their mother tongue and the right to be educated in that language are guaranteed (art. 32, para. 3); citizens belonging to minorities and persons who neither understand nor speak Romanian have the right to be informed of all records and documents on file, as well as the right to speak during legal proceedings and make submissions through an interpreter (art. 127, para. 2). Finally, article 59 provides for the allocation of a parliamentary seat for each organization of citizens belonging to national minorities, if during elections they fail to poll the number of votes required for parliamentary representation.

131. In practice, members of certain minorities consider that some of their legitimate demands have not been met. Apart from the problems with education referred to in the last chapter, one of the unmet demands is for the establishment of a ministry for minorities, which is called for in particular

by the representatives of the Hungarian minority. Another source of dissatisfaction is that in various pieces of legislation there are provisions formulated in vague terms which could be interpreted in a way harmful to minorities' interests. Reference was made in particular to the provisions of the Act of 29 July 1991 on national security, under which separatism is treated as an anti-State activity, for which people can be prosecuted, and those of the draft act on the electronic media, under which national, ethnic or linguistic separatism is forbidden and punishable by law.
Some provisions of the Constitution concerning the unitary nature of the Romanian State (art. 1), the designation of Romanian as the official language (art. 13) and the ban on incitement to territorial separatism (art. 30, para. 7), together with those dealing with the language of instruction (art. 32) and judicial procedure (art. 127), also arouse worries and reservations among many members of minorities. The same is true of article 59, paragraph 2, of the Constitution, according to which citizens belonging to a national minority can only be represented by one organization.

132. As far as relations between members of the Romanian and Hungarian ethnic groups are concerned, recent developments seem to show a growing tendency towards distrust and intolerance. This trend was however condemned in the conclusions of the report of the Commission of Inquiry into the events of March 1990 at Tirgu Mures (E/CN.4/1991/30, paras. 96 and 136). In its conclusions, the report, submitted to the Parliament in January 1991, praised "the establishment of a climate governed by mutual respect and tolerance, in which inter-ethnic debates - sometimes inevitably polemical - can proceed without hasty generalizations, and thus prevent minor disagreements from developing into sources of conflict between the two ethnic communities". However, it seems in fact that on several occasions during the recent period isolated incidents in which the protagonists were members of the Hungarian minority have been presented as being the responsibility of the community as a whole. Tensions resulting from individual problems seem to be artificially maintained and exacerbated, and the accent is deliberately put on ethnic characteristics; this attitude, fostered by the national television system and certain organs of the press, appears to have the tacit support, or sometimes even the encouragement, of the ruling circles, who see it as a justification for the existence of a large police apparatus and a diversion from current economic and political problems. An example given was the separatist aims of certain extremist members of the Hungarian minority, disavowed by the Democratic Union of Romanian Magyars and by almost all members of the Hungarian community; the isolated initiative of these extremists is said to have served as the pretext for the launching of a vast campaign orchestrated by television and other media against the alleged irredentist aims of the whole Hungarian minority. Mention was also made of the parliamentary debates on the report of the Parliamentary Commission of Inquiry into the events at Covasna and Harghita: this report deals with a series of incidents that occurred in the two districts of Covasna and Harghita, which have a Hungarian majority, after 22 December 1989; in its conclusions it denounces actions of a "nationalist, chauvinist and irredentist" character against persons of Romanian ethnic origin, who were obliged in many cases to leave those regions because of pressure, threats and abuses by members of the Hungarian minority. According to a number of persons, similar pressure has been exerted in other districts with a Romanian majority against members of the Hungarian minority,

who were obliged to leave; the conclusions in the report of the Commission of Inquiry thus only take account of one aspect of an overall situation to the disadvantage of others.

133. The information received also reports various threats and pressure against leading members of the Hungarian minority or against members of the Romanian community favourable to inter-ethnic reconciliation. Mention was also made of cases of arbitrary arrests or police violence of which persons of Hungarian origin were victims. Similarly, judicial proceedings after the inter-ethnic clashes of March 1990 seemed to have been aimed exclusively at members of the Hungarian and gypsy communities. Finally, several persons cited as examples of discriminatory measures against the Hungarian minority the cut-back in television broadcasts in Hungarian (see para. 128 above), and the inadequate representation of members of that minority in local government and business management.

134. As far as the situation of the gypsy minority is concerned, there were a number of positive measures to be noted, such as the introduction of a training programme for teachers specializing in the education of gypsies and the development of experimental programmes for their vocational integration. The gypsy community now has a number of political parties, cultural associations and publications. An inter-governmental commission was set up recently to study the specific problems of vulnerable groups of the population, including questions of law and order in local communities. A project has also been launched for the rebuilding of gypsies' houses destroyed at Kogalniceanu in October 1990 (E/CN.4/1991/30, para. 140).

135. Despite these encouraging developments, it was pointed out that the tendency to equate individual actions with collective behaviour characteristic of an ethnic group also applied to the gypsy minority. Thus, in various incidents in which members of the gypsy community have been attacked and their houses burnt and ruined - a total of some 20 incidents, in which 5 persons died as a result of collective violence - (particularly at Basarab in December 1990, Bolintin Deal in April 1991, Ogrezeni, Bolintin Vale and Romanesti in May 1991, Carpenis in June 1991, Casin and Valea Lapusului in August 1991), a few reprehensible actions on the part of certain individual gypsies have been treated as something for which the group as a whole should be blamed. This tendency to transform isolated conflicts into ethnic clashes seems to be encouraged by the negative image put across by television and certain other media, which tend to stress the ethnic origin of gypsies guilty of offences and thus to encourage hostility against the community as a whole. According to several people interviewed by the Special Rapporteur, the relative passivity of the local authorities and the lack of official reaction at the time of the first incidents of which gypsies were victims (particularly at Kogalniceanu) constituted tacit encouragement for the perpetrators of acts of violence and explained their frequency and recurrence. So far, no person responsible for anti-gypsy violence has in fact been arrested, whereas several gypsies guilty of wrong-doing which led to collective reprisals have been brought to trial. In general, members of the gypsy community are still said to suffer from discrimination in various fields. They are frequently ill-treated by the police; when they come up against the law, the negative stereotypes of gypsies mean that they are more easily assumed to be guilty; they are also among the first victims of economic restructuring and the redundancies it entails.

IV. CONCLUSIONS AND RECOMMENDATIONS

136. In his previous report dated 8 January 1991 (E/CN.4/1991/30), the Special Rapporteur noted that respect for human rights was continuing to improve in Romania. This trend has in general continued during 1991, particularly in terms of legislation.

137. Romania recently adopted a modern Constitution. The organization of the State is based on genuinely democratic principles: sovereignty of the people, separation of the legislative, executive and judicial powers, etc. As far as human rights are concerned, they are governed by specific provisions and are guaranteed by various institutions, such as the courts and the ombudsman. The Special Rapporteur is, however, obliged to make a few reservations on this or that particular point below.

138. The Constitution only represents the foundation of the structure. Much depends on the laws which give effect to its principles and on the way they are applied in practice. It is of course still too early to judge what the outcome will be, but some progress has already been made: during 1990 and 1991, many laws were passed or revised ensuring better protection for human rights, particularly in criminal procedures; in addition, several proposals are at present pending before the Parliament.

139. A more delicate matter is the practical application of the new constitutional and legislative rules. Many members of the administration who were in office under the Ceaucescu regime are still there. Attitudes are slow to change, and there are still many signs of the mentality inherited from the past.

140. To that must be added, as last year, practical circumstances which hinder the exercise of certain fundamental rights: serious economic difficulties, shortage of staff in some professions, such as the Bar, etc.

141. The right to life and physical and moral integrity is guaranteed and, in general, respected. Mention must be made however of excessively brutal intervention by the police on some occasions, resulting in many victims. That was the case, in particular, with the demonstrations that took place in Bucharest on 11-13 January, 22 April and 25-28 September 1991. In addition, it seems that the police are sometimes still making arbitrary arrests and behaving brutally when arresting and questioning people. On the other hand, in various situations the police have not done enough to guarantee the life, physical integrity and property of members of ethnic minorities, particularly the gypsies.

142. Respect for privacy is also guaranteed in principle. But there are many people who allege that their telephones are tapped, their mail vetted and their private life kept under surveillance. Various specific cases described to the Special Rapporteur convinced him that these complaints were not without foundation.

143. Several new pieces of legislation that had been passed or are pending before the Parliament are designed to improve the criminal justice system and guarantee suspects the rights they should have in a democratic country. Such

guarantees are also provided by the new Constitution. But these measures have not yet produced their full effects and the rights suspects are supposed to have are not always respected in practice.

144. The Prosecutor's Department (Procurature), which enjoyed excessive powers under the old regime, has been reduced to the functions it would normally have in a democratic State. Though it is responsible for criminal investigations, the zeal with which it conducts them seems to vary depending on the persons who are the object of them. Thus the many complaints made and inquiries opened regarding acts of violence against members of the opposition or ethnic minorities have only in rare cases led to the matter being sent to a criminal court. It is striking, for example, to note that the serious attacks that have been made on the gypsy minority have not so far led to any convictions. Several people, moreover, told the Special Rapporteur that they had abandoned the idea of complaining, for lack of confidence in the Prosecutor's Department and the criminal courts.

145. With regard to prisons, also, legislative measures to improve the situation have been adopted or are pending before the Parliament. In addition, the Government has set up a programme for modernizing existing prisons and building new ones. So far, however, the situation has scarcely changed in practice: the places of detention are dilapidated, the overcrowding is obvious, sanitary conditions are unsatisfactory and many prisoners complain of poor food. In addition, the prison staff, who to a large extent are still the same as under the previous regime, do not always respect the prisoners' dignity and are even sometimes gratuitously brutal towards them. It is true that this situation can only be improved gradually, given the economic difficulties facing the country, the rise in crime and the lack of qualified prison staff.

146. Freedom of movement has been completely restored. The Special Rapporteur was told, however, that people entering Romania were sometimes subjected to harassment by the frontier guards, particularly if they came in from Hungary.

147. Freedom of thought, conscience, religion and belief has been restored and is respected. There remains, however, a problem already mentioned in the previous report: the return of places of worship and other property confiscated from the Greek Catholic (Uniate) Church, which had been banned and persecuted under the previous regime. Little progress was made towards solving this problem in 1991; it cannot be left in abeyance indefinitely.

148. Freedom of expression and opinion has also been restored. In the previous report, it was mentioned that the exercise of this freedom was hindered by the shortage of paper, the inadequacy of the printing presses and the shortcomings of the distribution system. These difficulties continue to exist, although the situation seems to have improved somewhat in 1991. But publishers and journalists of the opposition press continue to complain of discrimination, threats and physical attacks by unknown persons; it is true that these acts of intimidation seem to have diminished in recent months. Similarly, many members of the opposition and ethnic minorities denounce Romanian television, which they accuse of covering events selectively and tendentiously, with a bias in favour of the authorities. The Special Rapporteur also has to express some concern about article 30,

paragraph 7, of the new Constitution, under which "defamation of the country and the nation shall be forbidden by law". Depending on the interpretation given to it, this provision could seriously hinder political discussion and criticism.

149. Freedom of assembly and association has been completely restored. The same is true in principle of the right to hold public demonstrations. But, as has been seen, some demonstrations have been dispersed by the police with excessive brutality.

150. The right to work does not seem to be the subject of violations on the part of the authorities. Trade union rights are also respected, although some independent trade unionists complain of threats and administrative harassment. As to the problem of what is to be done with the considerable assets that formerly belonged to the General Union of Romanian Trade Unions, now dissolved, it has not yet been settled.

151. The right to an adequate standard of living is affected by the dire economic situation; the authorities are doing what they can to improve conditions and giving special attention to health and to the situation of children and the handicapped. As mentioned in the previous report, however, they are hindered by a lack of resources and nursing staff.

152. Cultural rights are respected. Education, although well organized in principle, continues to suffer from the shortage of resources and qualified teachers.

153. The minority problem remains a cause for concern. Although the situation of the Hungarian ethnic minority improved substantially in 1990, progress was much less appreciable in 1991. Admittedly, the Hungarian minority is well represented in the Parliament; it is free to engage in its own cultural activities, and several schools and high schools where pupils are taught in Hungarian have been re-opened.

154. But it is not yet the case that all children of Hungarian ethnic origin have a chance to be educated, taught and trained from kindergarten to university in institutions, or at least classes, where the language used is Hungarian, an exception of course being made if there are only a few of them in any particular place. Similarly, there is no question, at least for the time being, of re-opening the former Bolyai University at Cluj, which has symbolic value for the Hungarian minority.

155. Broadcasts in Hungarian on Romanian television have been cut back, in the sense that some of them are transmitted on a network with a more limited range. It is obvious, moreover, that the Hungarian minority is under-represented in public institutions, even in the local authorities of regions where there are many Hungarians. Finally, the climate of distrust and even hatred which divides the Romanian and Hungarian communities did not improve in 1991. The Hungarian minority and its members are still often the object of harassment and interference.

156. Unfortunately, the new Constitution does not seem to open up any great prospects of improvement in this field. It does recognize the right of persons belonging to national minorities to study and be taught in their mother tongue; it is to be hoped that the law will be generous in deciding how this right is to be exercised. But it remains true that Romania, a unitary State, has only one national language, Romanian, which is also the only language of the courts. Thus, trials have to be conducted in that language, even in provinces where the Hungarian community has a large majority; it is only through an interpreter that members of national minorities can express themselves and study their files. Finally, depending on the way it is interpreted, there may be grounds for concern over article 59, paragraph 2, of the new Constitution, under which in elections to the Chambers citizens belonging to a national minority can only be represented by one organization.

157. The Special Rapporteur considers it regrettable that the majority does not show greater generosity towards the Hungarian minority. In his opinion, that would in the long run be likely to reduce the tension which divides the two communities.

158. As far as the sizeable gypsy community is concerned, it is still very marginalized and ill-protected, particularly by the police. But the Romanian authorities have taken various measures to give its members better education and training and to enable the community to preserve and assert its identity. It is to be hoped that these measures will enable the minority to escape from the atmosphere of contempt that surrounds it at present.

159. In his previous report, the Special Rapporteur deplored the climate of intolerance prevailing in Romania. While the situation seems to have improved for supporters of the opposition, that is not the case for members of the minorities, who remain exposed to the distrust and even hostility of a substantial part of the population. This animosity, which is fostered by some extremist organs of the media, does not seem to be sufficiently combated by the country's authorities. One cannot but regret in this connection the extremist language used by some members of the Parliament during the consideration of the report on the events in Harghita and Covasna.

160. The Special Rapporteur also drew attention in his previous report to the distrust and suspicion felt by opposition circles and ethnic minorities towards the authorities. Even if there has been some improvement, this atmosphere is far from having been dissipated.

161. Despite these rather pessimistic considerations, the Special Rapporteur is glad to note that overall the human rights situation has again improved in Romania in 1991. If the authorities can really ensure that actual practice reflects the promise held out by the new Constitution - despite the reservations expressed above - and by the legislation that has been passed or put before the Parliament, the Special Rapporteur is of the opinion that the human rights situation in Romania will be generally satisfactory.

162. It is however necessary that in this process Romania should continue to enjoy the assistance of the international community. The Special Rapporteur welcomes the fact that the country has already availed itself to good effect of the advisory services of the Centre for Human Rights. It would certainly

be helpful for it to continue along that path. The Special Rapporteur mentioned in particular in his last report that the country proposed to establish a Romanian Human Rights Institute. This Institute was set up by an act of 29 January 1991 and deserves support, at least in its early stages.

163. The Special Rapporteur therefore recommends that the Commission on Human Rights should:

(a) Take note of the fact that as a whole the human rights situation in Romania continued to improve in 1991;

(b) Recommend that the Romanian authorities should:

(i) Continue their action to ensure that human rights in all their aspects are respected in their country, both de jure and de facto;

(ii) Pay particular attention to the points raised in this report by the Special Rapporteur;

(iii) Consider the possibility of continuing to use the Voluntary Fund for Advisory Services set up by the Centre for Human Rights.

Annex I

Programme of work for the visit to Romania
from 17 to 27 October 1991

3.50 p.m.	Arrival in Bucharest and first meeting with officials from the Ministry of Foreign Affairs
6 p.m.	Meeting with Mr. Adrian Nastase, Minister of Foreign Affairs, and officials of the Ministry

Friday, 18 October 1991

9 a.m.	Meeting with Mr. Mircea Ionescu-Quintus, Minister of Justice, and officials of the Ministry
10 a.m.	Meeting with Mr. Teofil Pop, President of the Supreme Court of Justice
11 a.m.	Meeting with Mr. Nicolae Cochinescu, First Deputy to the Government Attorney, and officials of the Prosecutor's Department
12 noon	Meeting with Mr. Andrei Chirica, Minister of Communications
3 p.m.	Meeting with Lieutenant-General Dumitru Penciuc, Secretary of State and officials of the Ministry of the Interior
4 p.m.	Meeting with Mr. Virgil Magureanu, Director of the Romanian Information Service
5 p.m.	Meeting with Mr. Nicolae Spiroiu, Minister of Defence, and officials of the Ministry
6 p.m.	Meeting with Mr. Razvan Theodorescu, President of Romanian Radio and Television
8 to 10 p.m.	Private meetings

Saturday, 19 October 1991

9 a.m.-8 p.m.	Private meetings

Sunday, 20 October 1991

10 a.m.	Meeting with the Chief Rabbi, Moses Rosen
12 noon	Meeting with Mgr. Ioan Robu, Roman Catholic Archbishop
2.30-9 p.m.	Private meetings

Monday, 21 October 1991

9 a.m.	Meeting with Senator Antonie Iorgovan, Chairman of the Bureau of the Parliamentary Commission set up to draft a constitution, and members of the Commission
10 a.m.	Meeting with the Deputy Ion Oancea, Chairman of the Parliamentary Commission for human rights, worship and minorities and members of the Commission
11 a.m.	Meeting with the officials of the Bureaux of the Parliamentary Commissions of Inquiry into the events in Tirgu Mures, Harghita and Covasna
12 noon	Meeting with Mr. Nikolaus Kleininger and Mr. Mihai Zamfir, Under-Secretaries of State in the Ministry of Education and Science
3 p.m.	Meeting with Mr. Eugen Vasiliu, Under-Secretary of State in the Ministry of Culture
4 p.m.	Meeting with Mr. Ion Olteanu, Secretary of State for Youth and other officials of the Ministry of Youth and Sport
5 p.m.	Meeting with Patriarch Teoctist of the Romanian Orthodox Church and two other dignitaries of the Orthodox Church
6 p.m.	Meeting with officials from the Secretariat of State for Worship
7.30-8.30 p.m.	Private meetings

Tuesday, 22 October 1991

9 a.m.	Arrival at Timisoara, and meeting with Mr.Henrich Drobny, Deputy Prefect of the District of Timis
10 a.m.-1 p.m.	Private meetings
2 p.m.	Meeting with Mr. Dorel Borza, Prefect of the District of Timis
4 to 6 p.m.	Private meetings
7 p.m.	Return to Bucharest

Wednesday, 23 October 1991

8.30-11.45 a.m.	Private meetings
12 noon	Meeting with the head of the Criminal Investigation Department of Bucharest, and visit to police stations No. 10 and No. 15
2 to 8 p.m.	Private meetings

Thursday, 24 October 1991

9 a.m.	Meeting with Mr. Constantin Alecu, Secretary of State, and officials of the Ministry of Labour and Social Welfare
10 a.m.	Meeting with Mrs. Rodica Munteanu, Secretary of State, and officials of the Secretariat of State for the Disabled
11 a.m.	Meeting with Mr. Emil Tomescu, Secretary of State, and officials of the Ministry of Health
12 noon	Meeting with Mr. Adrian Nastase, Minister of Foreign Affairs, and officials of the Ministry
3 p.m.	Meeting with Mr. Theodor Stolojan, Prime Minister
4 p.m.	Audience with Mr. Ion Iliescu, President of the Republic
5 p.m.	Visit to the German High School of Bucharest and meeting with the Principal, Mr. Mihai Zamfirescu
6 p.m.	Visit to orphanage No. 12 of Bucharest and meeting with the Director

Friday, 25 October 1991

9 a.m.	Visit to Jilava prison and hospital prison; meeting with Mr. Mircea Ionescu-Quintus, Minister of Justice and officials of the Ministry of Justice and Prison Administration
12 noon	Meeting with Lieutenant-General Dumitru Penciuc, Secretary of State, and officials of the Ministry of the Interior
1.30 p.m.	Meeting with Mr. Mihai Popa Cherecheanu, Government Attorney, and officials of the Prosecutor's Department
4.50 p.m.	Departure for Suceava
8.30 p.m.	Meeting with Mr. Daniel Catargiu, Prefect of the District of Suceava, Mr. Filaret Poenaru, Mayor of Suceava, and other local officials

Saturday, 26 October 1991

9 a.m.	Meeting with Mr. Vasile Corniciuc, Deputy Prefect of the District of Suceava, and private meetings
6.25 p.m.	Return to Bucharest

Sunday, 27 October 1991

10 a.m.-1 p.m.	Private meetings
4.25 p.m.	Departure from Bucharest

Annex II

List of legislation in the field of human rights adopted between October 1990 and September 1991

Decision No. 1145 of 29 October 1990

Government decision on the costs of the publications issued by the Ministry of Culture

(Official Gazette No. 119 of 2 November 1990)

Decision No. 1161 of 1 November 1990

Government decision on the powers, organization and operation of the Secretariat of State for the Disabled

(Official Gazette No. 119 of 2 November 1990)

Act No. 29 of 7 November 1990

Administrative Litigation Act

(Official Gazette No. 122 of 8 November 1990)

Decision No. 1192 of 9 November 1990

Government decision on the protection of the population against any unlawful practices in the scheduling, execution, repair and maintenance of building work

(Official Gazette No. 6 of 14 January 1991)

Act No. 30 of 15 November 1990

Act on the recruitment of employees on the basis of their skills

(Official Gazette No. 125 of 16 November 1990)

Act No. 32 of 16 November 1990

Act amending and supplementing certain provisions of the Code of Criminal Procedure

(Official Gazette No. 128 of 17 November 1992)

Decision No. 1221

Government decision on the establishment of theological institutes at the university level of the Romanian Greek (Uniate) Catholic Church

(Official Gazette No. 132 of 26 November 1990)

Act No. 38 of 13 December 1990

Act concerning the extension of the provisions of Decree-Law No. 118/1990 on persons deported after 23 August 1944 (rights to be granted to persons persecuted for political reasons by the dictatorship established at that time)

(Official Gazette No. 142 of 13 December 1990)

Decision No. 1281 of 8 December 1990

Government decision on the wages of health unit staff for work on public, legal and other holidays

(Official Gazette No. 144 of 14 December 1990)

Act No. 40 of 18 December 1990

Act on the organization and operation of the Ministry of the Interior

(Official Gazette No. 146 of 18 December 1990)

Decision No. 40 of 17 January 1991

Government decision on the measures for improving the operation of border control posts

(Official Gazette No. 12 of 19 January 1991)

Decision No. 42 of 17 January 1991

Government decision on humanitarian aid granted to Somali refugees in Romania

(Official Gazette No. 12 of 19 January 1991)

Decision No. 63 of 22 January 1991

Government decision on the establishment of a Romanian committee on adoption

(Official Gazette No. 16 of 24 January 1991)

Order No. 17 of 24 January 1991

Order of the Ministry of Labour and Social Welfare approving the instructions concerning procedures and determining unemployment benefit applications

(Official Gazette No. 124 of 6 June 1991)

Act No. 9 of 29 January 1991

Act establishing a Romanian Human Rights Institute

(Official Gazette No. 24 of 30 January 1991)

Act No. 13 of 8 February 1991

Collective Labour Contracts Act

(Official Gazette No. 32 of 9 February 1991)

Act No. 14 of 8 February 1991

Act on Salaries

(Official Gazette No. 32 of 9 February 1991)

Decision No. 97 of 6 February 1991

Government decision on assistance to the activities of foreign natural and legal persons and NGOs carrying out humanitarian, medical and social activities in Romania

Act No. 15 of 11 February 1991

Settlement of Collective Labour Disputes Act

(Official Gazette No. 33 of 11 February 1991)

Act No. 21 of 1 March 1991

Romanian Citizenship Act

(Official Gazette No. 44 of 6 March 1991)

Decision No. 170 of 7 March 1991

Government decision on the establishment of autonomous printing corporations

(Official Gazette No. 61 of 23 March 1991)

Decision No. 171 of 7 March 1991

Government decision on the establishment of joint stock companies for trade in the area of printing and kindred trades

(Official Gazette No. 61 of 23 March 1991)

Act No. 31 of 22 March 1991

Act establishing a maximum work-day of eight hours for wage earners working in difficult or dangerous conditions

(Official Gazette No. 64 of 27 March 1991)

Decision No. 247 of 5 April 1991

Government decision on the establishment of joint stock trading companies in the area of culture

(Official Gazette No. 91 of 25 April 1991)

Decision No. 288 of 20 April 1991

Government decision on the qualification and retraining of unemployed persons

(Official Gazette No. 104 of 15 May 1991)

Act No. 42 of 1991

Act commemorating the martyred heroes and granting rights to their heirs and to persons injured in the December 1989 revolution

(Official Gazette No. 146 of 13 July 1991)

Act No. 48 of 16 July 1991

Act supplementing and amending the legal provisions concerning adoption

(Official Gazette No. 147 of 17 July 1991)

Decree No. 11 of 8 February 1991

Decree on the accession of Romania to the Convention relating to the Status of Refugees and to the Protocol relating to the Status of Refugees

Decision No. 461 of 30 June 1991

Government decision on the organization and operation of education in Romania for the school (academic) year 1991/1992

(Official Gazette No. 157 of 25 July 1991)

Act No. 46 of 4 July 1991

Act on the accession of Romania to the Convention relating to the Status of Refugees and to the Protocol relating to the Status of Refugees

(Official Gazette No. 143 of 17 July 1991)

Act No. 11 of 1990

Adoption Act

(Official Gazette No. 159 of 26 July 1991)

Decision No. 512 of 26 July 1991

Government decision on the wages of persons employed in religious organizations

(Official Gazette No. 172 of 21 August 1991)

Decision No. 515 of 26 July 1991

Government decision on the establishment of the National Habitat Centre

(Official Gazette No. 172 of 21 August 1991)

Act No. 51 of 29 July 1991

Social Security Act (National Insurance)

(Official Gazette No. 163 of 7 August 1991)

Act No. 54 of 1 August 1991

Trade Unions Act

(Official Gazette No. 164 of 7 August 1991)

Act No. 60 of 3 September 1991

Organization and Conduct of Public Meetings Act

Act No. 61 of 27 September 1991

Act on the punishment of acts contrary to accepted social standards and to public peace and order

Draft legislation drawn up by the Government in the area of human rights

- Petty Offences Act
- State Secrets Act
- Act amending and supplementing certain provisions of the Code of Criminal Procedure
- Act on Extinctive Prescription
- Act amending and supplementing the sections of the Criminal Code concerning acts of corruption

Annex III

Establishment of the Romanian Institute for Human Rights

PARLIAMENT OF ROMANIA

ASSEMBLY OF DEPUTIES SENATE

ACT

concerning the establishment of the Romanian Human Rights Institute.

The Parliament of Romania adopts the following Act.

Article 1

The Romanian Human Rights Institute is hereby established as an independent body endowed with legal personality. The headquarters of the Institute shall be situated at Bucharest.

The Romanian Human Rights Institute may set up its own branches.

Article 2

The purpose of the Institute shall be to foster a better awareness on the part of Romanian public bodies, non-governmental organizations and private citizens of human rights problems, as well as of the manner in which human rights are guaranteed in other countries, in particular the countries participating in the Conference on European Security and Cooperation.

Likewise, the purpose of the Institute shall be to inform foreign public opinion and international organizations regarding the practical modalities whereby human rights are assured and respected in Romania.

Article 3

With a view to the achievement of the foregoing objectives, the Institute shall, in particular, carry out the following activities:

(a) To establish, maintain and operate for the benefit of all users a documentation centre containing the texts of international conventions, legislative provisions, documents, studies and publications relating to human rights, as well as bibliographical references;

(b) To inform public bodies, non-governmental organizations and citizens, in particular by bringing to their knowledge international documents, practices and usages in the matter of human rights, with their translations wherever necessary;

(c) To organize training programmes intended mainly for those categories of persons who have a special responsibility for protecting human rights or for making human rights questions known among broad areas of the population;

(d) To submit, periodically or on request, information on government and non-government efforts being made in Romania to promote and protect human rights as well as on similar efforts in other countries and on international commitments undertaken by Romania and the manner in which they are implemented;

(e) To submit, at the request of Parliamentary Commissions, documentation on the human rights aspects of draft laws or other questions being examined by Parliament;

(f) To carry out research on various aspects of the promotion and observance of human rights both in Romania and at the international level;

(g) To publish a bulletin dealing with human rights and ensure wide distribution for it, by translating it also into foreign languages;

(h) To organize public opinion surveys on various aspects of human rights protection in Romania.

Article 4

The services of the Institute shall be available to all users. The texts of the basic documents and the relevant references shall be distributed free of charge or against payment of printing costs only.

The Institute may carry out research on a contract basis for learned societies or institutions and may formulate opinions, at the request of specialized bodies in the country or abroad. The rates for these services shall be established by the governing body of the Institute.

Article 5

The Institute shall be directed by a General Council consisting of representatives of the various Parliamentary groups, members of the Commission on Human and Citizen Rights of the Senate and members of the Commission on Human Rights, Worship and National Minorities of the Assembly of Deputies, as well as scholars and representatives of non-governmental organizations in the field of human rights designated by the permanent bureaux of the two houses of Parliament and endorsed by them.

The General Council shall appoint from among its members an Executive Committee consisting of seven persons; including parliamentarians, scholars and representatives of non-governmental organizations, as well as the Executive Director.

The Executive Committee shall be responsible for directing the daily activities of the Institute. The Executive Director shall represent the Institute as a juridical person in accordance with the rules in force.

The staff structure of the Institute is set forth in the appropriate annex which constitutes an integral part of the present Act.

Article 6

The Institute shall organize periodic consultations and other joint activities with the non-governmental organizations in Romania, the research institutes of the Academy and other bodies which are active in the field of human rights. It may establish relations of cooperation with the human rights institutes or similar bodies in other countries, as well as with international and regional organizations carrying out activities in the field of human rights and shall organize seminars, symposia and other activities with national or international participation.

Article 7

The Institute shall lend its support, with the aid of highly qualified specialists, to the organization of courses of study on human rights in the main institutions of higher education of the country. In the framework of these courses, leading political figures from various countries and specialists known for their concern to promote human rights on a world-wide basis may also be invited to give lectures.

Article 8

The operation of the Institute shall be governed by regulations approved by the General Council. The annual reports of the Institute shall be transmitted to Parliament for information.

Article 9

The expenses of the Institute shall be covered by the budget of Parliament.

The resources necessary for that purpose shall be allocated as from 1 January 1991.

The Institute may accept voluntary contributions, donations and other gifts under the regime of a foundation.

Article 10

After two years of operation by the Institute, its governing bodies shall submit to Parliament a report containing an assessment of the activity and operation of the Institute, taking particularly into account the evaluation of those who have used its services.

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* *

This Act was adopted by the Senate at its meeting of 24 January 1991 - (Signed) President of the Senate

The foregoing Act was adopted by the Assembly of Deputies at its meeting of 28 January 1991 - (Signed) President of the Assembly of Deputies

On the basis of article 82, subparagraph (m) of Legislative Decree No. 92/1990 concerning the election of the Parliament and President of Romania, I hereby promulgate the Act concerning the Establishment of the Romanian Human Rights Institute and order its publication in the Monitorul Oficial of Romania.

(Signed) President of Romania

Bucharest 29 January 1991
No. 9

Annex IV

Amendments to the Code of Criminal Procedure by Act No. 20/9 October 1990, published in the Monitorul Oficial No. 12/10 October 1990

ORIGINAL TEXT	TEXT IN FORCE FOLLOWING THE AMENDMENTS INTRODUCED BY ACT NO. 20/9 OCTOBER 1990
Article 5 - In the course of criminal proceedings no one may be detained or arrested otherwise than in those cases and under those conditions which are specified by law.	Article 5 - Personal freedom shall be guaranteed throughout the duration of criminal proceedings. No one may be held or arrested or subjected to any form of restriction of freedom otherwise than in the cases and under the conditions which are specified by law. If the person against whom the decision ordering pre-trial detention or restriction of freedom is taken considers the decision to be unlawful, he shall have the right, throughout the proceedings, to apply to the competent authority in conformity with the law. Anyone against whom a measure of pre-trial detention has been taken unlawfully has the right to compensation for the injury sustained, in the conditions specified by law. Throughout the criminal proceedings, an accused or defendant who is in pre-trial detention may apply for provisional release on bail or under judicial supervision.
Text introduced by Act No. 20/9 October 1990	Article 5/1 - Anyone in the process of criminal proceedings or judgement shall be treated with the respect due to human dignity. Any act of torture or cruel, inhuman or degrading treatment shall be punishable by law.
Article 6 - The accused, the defendant as well as the other parties shall be guaranteed the right to a defence throughout the criminal proceedings, in the conditions specified by law.	Article 6 - The accused, the defendant and the other parties shall be guaranteed their right to a defence throughout the criminal proceedings. The Judicial organs shall be under an obligation to inform the accused or defendant of the acts of which he is accused as well as their legal setting and to afford him the possibility of preparing his defence.

	Each party shall be entitled to the assistance of a defending counsel throughout the criminal proceedings. The Judicial organs shall be under an obligation to inform the accused or defendant, before taking his first statement, of his right to be assisted by a defending counsel, and to note that fact in the records of the proceedings. In the conditions and in the cases specified by law, the judicial organs shall be under a duty to take measures to provide legal aid to the accused or defendant if the latter has not chosen his own defending counsel.
Article 27 - The Departmental Court:	Article 27 - The Departmental Court:
1. shall have primary jurisdiction over:	1. shall have primary jurisdiction over:
(a) the offences indicated by the Criminal Code in articles 174-177, 190, 212, 218, 219 paras. 3 and 4, 223 paras. 2 and 3, 224 para. 3, 225 paras. 2 and 3, 226, 229 para. 3, 231 paras. 3 and 4, 248 para. 2, 274 para. 2, 275 para. 3, 276, 282-285, 302, 317 and 323.	(a) the offences indicated by the Criminal Code in articles 174-177, 190, 212, 218, 219 para. 3, if the act has resulted in a disaster, and para. 4, article 223, para. 3 article 224, para. 3, article 225, para. 3, article 226, article 229, para. 3, article 231, para. 3 and article 323, paras. 3 and 4, article 248, para. 2, article 267 (1), article 273, para. 2, article 274, para. 2, article 275, para. 3, article 276, article 282 and article 317.
Article 136 - In the case of offences punishable by imprisonment, and in order to ensure the good conduct of the criminal proceedings or to prevent the accused or defendant from avoiding prosecution, judgement or enforcement of the sentence, one or other of the following preventive measures may be taken in this respect:	Article 136 - In the case of offences punishable by imprisonment, and in order to ensure the good conduct of the criminal proceedings or to prevent the accused or defendant from avoiding prosecution, judgement or enforcement of the sentence, one or other of the following preventive measures may be taken in this respect:
(a) arrest;	(a) arrest;
(b) obligation not to leave the locality;	(b) obligation not to leave the locality;
(c) pre-trial detention.	(c) pre-trial detention.

The measure indicated in (a) may be taken by the criminal investigation body while the measures indicated in (b) and (c) may only be taken by the prosecutor or by the trial court.	The measure indicated in (a) may be taken by the criminal investigating body while the measures indicated in (b) and (c) may only be taken by the prosecutor or by the trial court.
The measure to be taken shall be chosen taking into account its purpose and the degree of social menace represented by the offence, as well as the health, age and past record and other particulars concerning the persons against whom the measure is being taken.	The measure to be taken shall be chosen by taking into account its purpose and the degree of social danger represented by the offence, as well as the health, age, previous record and other particulars concerning the persons against whom the measure is being taken.
	When the pre-trial arrest of the accused or defendant is decided, the prosecutor or the trial court shall inform a member of his family or any other person by a writ of that decision within 24 hours.
Text introduced by Act No. 20/9 October 1990	Article 140 (1) - The decision ordering pre-trial arrest (or detention) or prohibition to leave the locality may be challenged by lodging a complaint with the court competent to try the merits of the case.
	The complaint, together with the file of the case, shall be referred to the body specified in paragraph 1 within 24 hours and the accused or the defendant who is under arrest shall be brought before the Court and shall be assisted by a counsel.
	The complaint shall be examined in the judges' council chamber.
	The chamber shall take a decision on the same day by giving a final ruling on the legality of the measure taken after having heard the accused or defendant. The participation of the prosecutor shall be compulsory.
	If the chamber considers the pre-trial detention measure to be unlawful, it shall order the repeal of the arrest and the release of the accused or defendant or if, as the case may be, the repeal of the prohibition to leave the locality.

Article 155 - The duration of detention of the accused may be extended in case of need; grounds shall be stated therefor.	Article 155 - The duration of detention of the accused may be extended in case of need; grounds shall be stated therefor.
The extension of the period of the accused's detention may be decided by the chief prosecutor of the unit of the Prosecutor's Department in which the prosecutor supervising the criminal investigation or dealing with that investigation functions.	The extension of the period of the accused's detention may be decided by the chief prosecutor of the unit of the Prosecutor's Department in which the Prosecutor in charge of supervising the criminal investigation or dealing with that investigation functions. The extension may be ordered once only and for not more than 30 days.
The extension may be ordered on three occasions, each extension not exceeding one month.	
If the detention order was issued by the chief prosecutor of the unit of the Prosecutor's Department which supervises the criminal investigation, the extensions specified in the foregoing paragraph shall be decided by the Chief Prosecutor of the higher ranking unit.	If the detention order was issued by the chief prosecutor of the unit of the Prosecutor's Department which supervises the criminal investigation, the extension specified in the foregoing paragraph shall be decided by the chief prosecutor of the higher ranking unit.
If the detention order was issued by a prosecutor of the General Prosecutor's Department, the extensions specified in subparagraph 2 above shall be decided by a prosecutor senior in rank.	If the detention order was issued by a Prosecutor of the General Prosecutor's Department, the extensions specified in paragraph 2 shall be decided by a prosecutor senior in rank.
Article 158 - In the event of the period of pre-trial detention being extended by three months, the prosecutor who ordered the extension, on receiving the request in conformity with article 156, at least eight days before the expiry of the period of detention, if he considers that the accused should not be released, shall refer the matter at least five days before the expiry of the latest extension, to the body competent to decide on the merits of the case.	Article 158 - In the event of the period of pre-trial detention being extended, the prosecutor who ordered the extension on receiving the request in accordance with article 156, at least eight days before the expiry of the period of detention, if he considers that the accused should not be released, shall refer the matter at least five days before the expiry of the extension, to the body competent to decide on the merits of the case.

When the extensions have been decided by a prosecutor of a unit of the Prosecutor's Department lower in rank than that corresponding to the body competent to decide on the merits of the case, if that prosecutor, considers that the accused shall not be released, he shall forward the request within 24 hours to the prosecutor of the higher ranking unit who, if he considers that request justified, shall refer it to that body.

The request shall be attached to a letter addressed to the body. The contents of the letter may indicate grounds for the extension of the detention other than those contained in the request.

When the extension has been decided by a prosecutor of a unit of the Prosecutor's Department lower in rank than that corresponding to the body competent to decide on the merits of the case, if that prosecutor considers that the accused should not be released, he shall forward the request within 24 hours to the prosecutor of the higher ranking unit, which if it considers the request justified, shall refer it to that body.

The request shall be attached to a letter addressed to the body. The said letter may indicate grounds to justify the extension of the detention other than those contained in the request.

Article 159 - The body seized shall set a time-limit for submissions before the expiry of the detention order.

The court shall be presided over by the President and the attendance of the prosecutor shall be compulsory.

The documents of the case shall be filed by the prosecutor and may be consulted only by the court.

The accused shall appear in court and may be assisted by by defending counsel.

In the event of the court granting an extension, such extension may not exceed 30 days. The provisions of article 157, concluding paragraph, shall apply as appropriate.

Article 159 - the body seized shall set a time-limit for submissions before the expiry of the detention order.

The court shall be presided over by the President or by a judge designated by him, and the attendance of the prosecutor shall be compulsory.

The documents of the case shall be filed by the prosecutor not less than 24 hours before the expiry of the time-limit and may be consulted by the defending counsel at his request.

The accused shall appear in court and shall be assisted by defending counsel. In the event of the court granting an extension, such extension may not exceed 30 days.

The decision concerning extension shall not be subject to appeal. The decision shall be communicated to the administration of place of detention, which shall be under a duty to bring it to the knowledge of the accused.

The decision concerning extension shall not be subject to appeal.

The court may grant further extensions, each of them not exceeding 30 days. The provisions of the foregoing paragraphs and of article 158 shall apply as appropriate.

Article 160 - When several accused persons are arrested on the same grounds and the third extension of their detention expires on different dates, the chief prosecutor who makes a request to the court under article 158 in respect of one of the accused shall raise the question of the other accused before the court at the same time.

Text introduced by Act No. 20/9 October 1990

The court may order further extensions, each of them not exceeding 30 days. The provisions of the foregoing paragraphs and of article 158 shall apply as appropriate.

Article 160 - When several accused persons are arrested on the same grounds and the duration of the extension of arrest expires on different dates, the chief prosecutor, or as the case may be the prosecutor senior in rank, who makes the request to the court under article 158 in respect of one of the accused shall raise the question of the other accused before the court at the same time.

Section V

Article 160 (1) - Throughout the criminal proceedings, an accused who is in pre-trial detention may request his conditional release, either under judicial supervision or on bail.

Article 160 (2) - Conditional release under judicial supervision may be granted in the cases of unintentional offences, as well as in the case of intentional offences for which the law specifies a penalty of imprisonment of not more than 7 years.

Conditional release under judicial supervision may not be granted in cases where the accused is a recidivist or where there are grounds for fearing the commission of another offence.

The court concerned may impose the following obligations which the accused must observe during his conditional freedom:

(a) To refrain from going outside the territorial limits set in the conditions established by the court;

(b) To communicate any change of domicile or residence to the court;

(c) To refrain from frequenting certain specified places;

(d) To appear before the criminal prosecution authority or, as the case may be, before the trial court whenever called upon to do so;

(e) To refrain from contact with certain specified persons;

(f) To refrain from driving any motor vehicle or certain other vehicles;

(g) To refrain from exercising the profession that was used to commit the acts for which he is accused.

Article 171 - The accused or defendant has the right to be assisted by a defence counsel throughout the criminal proceedings.

Legal aid shall be compulsory when the accused or defendant is a minor or a member of the armed forces on duty. Similarly, legal aid shall be compulsory when the accused or defendant is under arrest on other grounds.

During the trial, legal aid shall be compulsory in cases in which the law provides, for the offence that has been committed a penalty of imprisonment for a period of more than 5 years or when the court considers that the accused cannot defend himself on his own.

When legal aid is compulsory, if the accused or defendant has not chosen a lawyer, measures shall be taken to appoint a defence counsel ex officio. The duties

Article 171 - The accused or defendant shall have the right to be assisted by a counsel throughout the criminal investigation and the trial and the court shall be under a duty to inform him of this right.

Legal aid shall be compulsory when the accused or defendant is a minor, a member of the armed forces on duty or on a short term refresher course as a reservist, a student in a military training establishment, a boarder in a special re-education and work school or a person who is under arrest on other grounds.

of the defence counsel designated by the court shall cease on the appearance of a defence counsel chosen by the accused.

If the defence counsel is absent when the case is tried and he cannot be replaced, the case shall be adjourned.

Article 172 - In the course of criminal proceedings, the defence counsel of the accused or defendant may formulate requests, may file memoranda and may attend the performance of the following acts in the proceedings: inquiries at the site of the offence, house searches and autopsies, extension by the court of the period of detention; the defence counsel may, with the consent of the prosecution, attend other acts in criminal proceedings.

The defence counsel of the accused or defendant may attend the presentation of exhibits in criminal proceedings.

An accused who is under arrest may contact the defence counsel. Where the good conduct of the investigation so requires, the prosecution may, by an order with reasons stated, prohibit contact between the accused under arrest and the defence counsel for a maxmimum period of 30 days. In case of need, the duration of this prohibition may be extended once for a maxmimum of 30 days.

Contact with the defence counsel may not be forbidden where the detention has been extended by the trial court, and the same shall apply to the presentation of exhibits in criminal proceedings.

Article 172 - In the course of criminal proceedings, the defence counsel of the accused or defendant shall have the right to attend the performance of any act in the proceedings and may formulate requests and file memoranda. The absence of the defence counsel shall not prevent the conduct of criminal proceedings, if it is established that the defence counsel was informed of the date and time of the performance of the act.

In cases where legal aid is compulsory, the criminal prosecution organ shall make sure of the presence of the defence counsel when the accused is heard.

In the event of the defence counsel of the accused or defendant being present at the performance of an act in the criminal proceedings, mention shall be made of these proceedings and the records shall be signed by the defence counsel.

An accused who is under arrest shall have the right to contact the defence counsel. In exceptional cases, where the good conduct of the investigation demands it, the prosecutor, either on his own initiative or on the proposal of the criminal investigation organ, may decide, by an order with reasons stated, that contact shall be prohibited between the arrested accused and the defence counsel, once only, for a maximum period of five days.

Contact with the defence counsel may not be forbidden where the detention has been extended by the trial court; and that contact shall be compulsory on the presentation of the exhibits in criminal proceedings.

The defence counsel shall have the right to lodge a complaint in accordance with article 275 if his requests are not accepted.	The defence counsel shall have the right to lodge a complaint under article 275 if his requests are not accepted.
During the trial, the defence counsel shall have the right to assist the accused and exercise the rights derived from his trial and, in cases where the accused is under arrest, to contact him.	During the trial, the defence counsel shall have the right to assist the accused in order to enable him to exercise his rights derived from the trial and in the event of the accused being under arrest, to contact him.
Article 201 - Criminal proceedings shall be conducted by prosecutors and criminal investigation bodies.	Article 201 - Criminal proceedings shall be conducted by prosecutors and criminal investigation bodies.
The following shall act as criminal investigation bodies:	The following shall act as criminal investigation bodies:
(a) the investigation organs of the security services;	(a) the investigation organs of the police;
(b) the investigation organs of the militia;	(b) the special investigation organs.
(c) the special investigation organs.	
Operators specially designated by the Ministry of the Interior shall function as organs of the security services and the militia.	Operators specially designated by the Ministry of the Interior shall function as investigation organs of the police.
Article 209 The Prosecutor shall supervise acts in criminal proceedings.	Article 209 The prosecutor shall supervise acts in criminal proceedings.
The prosecutor may institute any act of criminal proceedings in the cases under his supervision.	The prosecutor may institute any act of criminal proceedings in the cases under his supervision.
Criminal proceedings shall be instituted compulsorily by the prosecutor in the case of the	Criminal proceedings shall be instituted compulsorily by the prosecutor in the case of the offences indicated in articles 174-177,

offences indicated in articles 174-177, 179, 189-191, 212, 225 para. 3, 226, 236, 254, 255, 257, 265, 266, 268, 273-276, 282-285, 289-302 and 317 of the Criminal Code and in that of the offences indicated in article 26 para. 2, subpara. (b) article 27 para. 1 subparas. (b) and (d), article 28 para. 1 subpara. (c) and article 29 para. 1 subpara. (b) of the same Code, as well as in the case of offences against workers' health and safety.

The authority competent to carry out criminal proceedings in the cases specified in the foregoing paragraph shall be prosecutor of the unit of the Prosecutor's Department corresponding to the court which, in conformity with the provisions of articles 25-29, has primary jurisdiction to try the case.

When criminal proceedings are instituted by the prosecutor, the order whereby pre-trial detention and application were decided must be submitted for confirmation by the chief prosecutor of the unit and, where the proceedings are instituted by the chief prosecutor himself, the confirmation shall emanate from the prosecutor who is senior in rank.

189-191, 212, 225 para. 3, 226, 236, 254, 255, 257, 265, 267(1), 268, 273-276, 282-285, 299-302 and 307 of the Criminal Code and in that of the offences indicated in article 26 para. 2 subpara. (b), article 27 para. 1 subpara. (b), article 28 para. 1 subpara. (c) and article 29 para. 1 subpara. (b) of that Code, as well as in the case of offences against workers' health and safety.

The authority competent to carry out criminal proceedings in the cases specified in the foregoing paragraph shall be the prosecutor of the unit of the Prosecutor's Department corresponding to the court which, in conformity with the provisions of articles 25-29, has primary jurisdiction to try the case.

When criminal proceedings are instituted by the prosecutor, the order whereby pre-trial detention and application were decided must be submitted for confirmation by the chief prosecutor of the unit and, where the proceedings are instituted by the chief prosecutor himself, the confirmation shall emanate from the prosecutor who is senior in rank.

Article 245 The order to terminate criminal proceedings shall pronounce at one and the same time on:

(a) the rescinding of pre-trial measures as well as of steps taken to guarantee the execution of the penalty or the confiscation of property;

(b) the confiscation of property which in accordance with article 118 of the Criminal Code is liable to special confiscation and the restitution of other property;

In the event of a dispute arising as to the ownership of the corpus delicti or other objects which have served as material evidence, they shall be kept by the criminal investigation organ until there is a decision in the civil proceedings;

(c) measures to ensure payment of monetary compensation and the restitution of the position existing prior to the offence.

In a case where a decision was taken to indicate measures to guarantee payment of monetary compensation, the said measures shall be considered to have lapsed if the injured party does not institute civil proceedings within a period of 30 days counted from the communication of termination of criminal proceedings;

(d) court costs: establishing their amount, the party or parties liable and ordering their collection.

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(d) court costs: establishing their amount, the party or parties liable and ordering their collection.

If during the criminal proceedings one of the security measures indicated in article 162 has been taken, mention shall be made thereof.

(e) the restitution of bail in the cases specified by law.

If during the criminal proceedings one of the security measures indicated in article 162 has been taken, mention shall be made thereof.

Article 350 In its judgement, the court shall be bound to pronounce on the revocation, the particulars or the detention of the accused, taking into account the general provisions in title IV, chapter I.

In the case of an acquittal or the discontinuance of criminal proceedings, the court shall order the immediate release of the accused if he is in pre-trial custody.

Similarly, the court shall order the immediate release of an accused person, if he is in pre-trial custody, when it orders:

(a) a penalty of imprisonment equal at most to the duration of the arrest and pre-trial detention;

(b) a penalty of imprisonment with stay of execution or with the obligation to perform corrective work;

(c) a fine.

The judgement handed down in the cases mentioned in the foregoing paragraphs concerning the detention of the accused shall be enforceable.

When, in accordance with the provisions of paragraphs 1, 2 and 3, the accused is released, the court shall communicate the decision to the administration of the place of detention.

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The judgement handed down in the cases mentioned in the foregoing paragraphs concerning the detention of the accused shall be enforceable.

When, in accordance with the provisions of paragraphs 1, 2 and 3, the accused is released, the court shall communicate the decision to the administration of the place of detention.

An accused person convicted at primary jurisdiction level who is under arrest shall be released as soon as the arrest and detention together equal the duration of the penalty handed down, even if the decision is not final. The release shall be decided by the administration of the place of detention. Accordingly, a copy of the decision or an extract containing the particulars specified in article 140, final paragraph, shall be communicated to it, as soon as the decision is pronounced.

Chapter IV

Compensation for injury in the case of an unjustified arrest or conviction.

Article 504 Anyone who has been convicted definitively shall be entitled to compensation from the State for the damages sustained if, following the retrial of the case, it is established under a final decision that that person has not committed the act attributed to him or that the act in question was non-existent.

A similar entitlement to compensation for damages shall apply where a person has been arrested and subsequently, for the reasons indicated in the foregoing paragraph, has been discharged from the proceedings or has been aquitted.

An accused person convicted at primary jurisdiction level who is in custody shall be released as soon as the period under arrest and detention together equal the duration of the penalty handed down, even if the decision is not final. Release shall be ordered by the administration of the place of detention. Accordingly, a copy of the decision or an extract containing the particulars specified in article 140, final paragraph, shall be communicated to it as soon as the decision is pronounced.

Chapter IV

Compensation for injury in the case of an unjustified arrest or preventive measure.

Article 504 Anyone who has been finally convicted shall be entitled to compensation from the State for the damages sustained, if, following the retrial of the case, it is established under a final decision that that person has not committed the act attributed to him or that the act in question was non-existent.

A similar entitlement to compensation for damages shall apply where a person against whom a preventive measure has been taken and who, subsequently, for the reasons indicated in the foregoing paragraph, has been discharged from the proceedings or has been aquitted.

A person shall not be entitled to compensation for damages, if in the course of the criminal proceedings or the trial, that person has prevented, or tried to prevent, the uncovering of the truth, either intentionally or by gross negligence.

In the case of the persons indicated in paragraphs 1 and 2, if prior to their arrest, they were in employment, their seniority and continuity of service and the time during which they were under arrest shall be calculated and in the case of the persons indicated in paragraph 1, their seniority and continuity of service and the time during which they served their prison sentence with the obligation to perform corrective work shall be calculated.

A person shall not be entitled to compensation for damages if, in the course of the criminal proceedings or the trial that person has prevented, or tried to prevent the uncovering of the truth, either intentionally or by gross negligence.

In the case of the persons indicated in paragraphs 1 and 2, if prior to their arrest they were in employment, their seniority and continuity of service and the time during which they were under arrest shall be calculated and in the case of the persons indicated in paragraph 1, their seniority and continuity of service and the time during which they served their prison sentence with the obligation to perform corrective work shall be calculated.